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NSTITUENT ASSEMBLY OF INDIA

# CONSTITUTIONAL PRECEDENTS

(First Series)

1947

(Second Edition)

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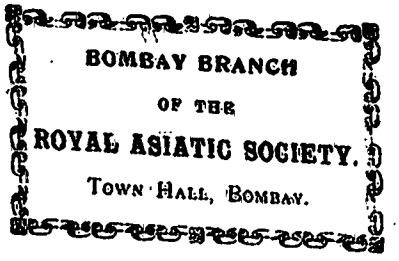


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# CONSTITUTIONAL PRECEDENTS

## INTRODUCTION TO FIRST EDITION

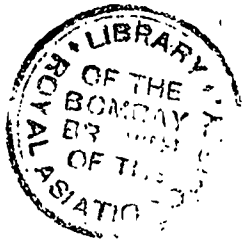
This collection is the first batch of a series of pamphlets which I am preparing for the use of members of the Constituent Assembly. They deal only with the more salient aspects of the new Constitution, whether substantive or procedural; and even in respect of these aspects, they do not pretend to be exhaustive. For example, it has been pointed out by certain critics that the pamphlet on Union Subjects suggests too narrow a delimitation of their scope; and, on the other hand, it has been pointed out by other critics that the limits suggested are too wide. All that need be said in defence is that the object of the pamphlets is to stimulate interest and that the material set out therein has not been selected for the purpose of supporting any particular point of view. It is hoped that every member will supplement them from the results of his own study and research, so that all points of view may be fairly presented before the Constituent Assembly.

B. N. RAU,

*Constitutional Adviser.*

NEW DELHI;

*September 2, 1946.*

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## POINTS OF PROCEDURE

### I. Provincial Co-operation.

According to the scheme outlined in the Cabinet Delegation's statement of May 16, 1946, the Provinces will, to a large extent, be autonomous units exercising all powers except those reserved to the Union. It will, therefore, be necessary to frame the Constitution in such a way as to make it acceptable to the Provinces to the largest possible extent; otherwise, it may not work smoothly. For example, the Union services, such as railways, or posts and telegraphs, or broadcasting may occasionally be dislocated by strikes and the Union Government may require the assistance of the law-and-order authorities of the Provinces. Unless the Constitution is such as to commend itself to the Provinces, this assistance may not be readily forthcoming and may even be completely withheld. Again, as under section 124 of the Government of India Act, 1935, so under the new Constitution, the Union may find it necessary, either by agreement or by law, to confer powers and impose duties on provincial authorities: *e.g.*, to require provincial courts to try and punish offences against Union laws. Or, again, the Union may have to invoke provincial assistance to acquire land for Union purposes. What applies to the Union portion of the Constitution applies with even greater force to the provincial. Hence the need for enlisting provincial co-operation as far as possible in the framing of every part of the Constitution. Procedure in the Constituent Assembly and its Sections has an important part to play in this connection. Let us see what was done in other countries to secure provincial co-operation.

**Mode of Voting**

*U. S. A.*

In the Philadelphia Convention of 1787, which framed the Constitution of the U.S.A., the representatives of 12 States were present. The strength of the delegation varied from State o State: thus Pennsylvania sent 8 delegates, any 4 of them being competent to represent the State; while Connecticut sent 3, any one or more of them being competent to act. The final draft was signed by 39 representatives in all. Early in the proceedings, the Convention appointed a Committee to draw up rules of procedure. The first of these rules, adopted as a Standing Order of the Convention, was as follows:—

> "A House, to do business, shall consist of the Deputies of not less than seven States; *and all questions shall be decided by the greater number of these which shall be fully represented;* but a less number than seven may adjourn from day to day." ("Documentary History of the Constitution of the United States of America", Vol. I, p. 51.)

It will thus be seen that each State, large or small, had one vote, decisions being by a majority of those that were fully represented. The question as to the mode of voting had been discussed among the members present while the Convention was waiting for a quorum and it had been urged by some that the large States should firmly refuse parity in this matter as unreasonable and as enabling the small States "to negative every good system of government". Ultimately, however, it was felt that such an attempt might lead to fatal altercations and that it would be easier to persuade the smaller States to give in on particular issues than to disarm them on all.

How this worked out in practice may be seen from an actual instance. On June 29, 1787, the Convention debated a proposed provision of the new Constitution that each State should have an equal vote in the Upper House of the Federal Legislature. The delegates from Connecticut and the other small States supported the proposal with great ability and vehemence; the large States opposed it bitterly. When the question was put to the vote on July 2, 1787, there was a tie, the votes of five States being in the affirmative, five in the negative and one divided. The divided vote was due to the fact that Georgia, though small at the moment, was a growing State, so that one of its delegates voted "Aye" and the other "No". As the result of the tie, the Convention appointed a Compromise Committee consisting of one member from each State. The Committee recommended representation according to population for the Lower House of the Federal Legislature and an equal vote for every State in the Upper House. After several days of acrimonious discussion and the appointment of further committees, this recommendation, slightly modified as regards its first half, was adopted by the Convention by a narrow majority. It may be mentioned that at an early stage of the debate it had been proposed that one of the smaller States which happened to be absent should be specially requested to attend; but this was regarded as sharp practice and was promptly voted down. The procedure adopted and the whole course of the debate show how every State, large or small, was given its due voice how anything savouring of unfairness was avoided, and how deadlocks were resolved by a pervading spirit of compromise.

*Canada*

On the very first day of the Quebec Conference which framed the basis of the Canadian Constitution, it was proposed "that in taking the votes on all questions to be decided by the Conference, except questions of order, each Province or Colony, by whatever number of delegates represented, shall have one vote and that in voting Canada be considered as two Provinces". It should be remembered that at that time "Canada" was a single Province consisting of Ontario or Upper Canada and Quebec or Lower Canada. Under the new Constitution, these two halves of old Canada became separate Provinces. This explains why in the matter of voting upon the new Constitution Canada was considered as two Provinces. In other words, what the Conference did was to give one vote to each unit of the new Union. It may further be mentioned that at the Conference Canada (Ontario and Quebec) was represented by 12 delegates, New Brunswick by 7, Nova Scotia by 5, Prince Edward Island by 7 and Newfoundland by 2. In spite of this unequal representation, the units were given equal voting power.

Next day (on October 11, 1864), the Conference adopted the following rules of procedure:—

1. That free individual discussion and suggestion be allowed.
2. That all motions and the discussions and votes thereon be in the first place as if in Committee of the Whole.
3. That after question put, no discussion be allowed.
4. That each Province retire for consultation after question put.
5. That after the scheme is settled in Committee of the Whole, all the resolutions be reconsidered as if with Speaker in the Chair.

6. That just before the breaking up of the Conference, the minutes be carefully gone over and settled, with a view to determining what is to be submitted to the Imperial and Provincial Governments and what is to be published for general information.

Let us see how the proceedings were actually conducted by taking a concrete case: On October 19, 1864, the Conference debated a proposal that representation to the House of Commons, that is to say, the Lower House of the Federal Legislature, should be on the basis of population. Prince Edward Island, which would have been entitled only to five members out of nearly 200 on this basis, objected; but the motion was carried, all the others voting for it. Thereupon, Haviland (for Prince Edward Island) observed: "Prince Edward Island would rather be out of the Confederation than consent to this motion. We should have no status. Only five members out of 194 would give the Island no position." Tilley (for New Brunswick) pointed out that it had been fully understood at a previous Convent on at Charlottetown that representation would be on a population basis. Palmer (for Prince Edward Island) protested that there had been no such understanding at Charlottetown and that representation by population is not applicable when a certain number of Provinces—some with no public debt and low taxation, others with a heavy debt and high taxation—are throwing their resource into one Confederation and giving up their own self-government and individuality. Shea (for Newfoundland) supported Tilley. Coles (for Prince Edward Island) also supported Tilley and regretted his own colleague Palmer's attitude. Gray (for Prince Edward Island) also thought that the population basis had been fully accepted at Charlottetown. Galt (for Canada) requested the Prince Edward Island delegates to reconsider their decision, observing that "it would be a matter of reproach to us that the smallest Colony should leave us". Whelan (for Prince Edward Island), who had come prepared to vote with Haviland and Palmer, also suggested reconsideration. "I do not think, however, I could say that I was satisfied with the representation of five in the Federal House of Commons. We are in an isolated position. Our resources are large, and our people would not be content to give up their present benefits for the representation of five members. It may be said that the Confederation will go on without Prince Edward Island, and that we shall eventually be forced in. Better, however, than that we should willingly go into the Confederation with that representation. But if the Government who form the delegation will take the responsibility on them, I may support them." Next day, Palmer said that he had been under a misapprehension the previous evening and that he had since been told by his colleagues from Prince Edward Island that the financial settlement would follow the discussion about representation and that the matter of representation would depend on the financial resolutions. He conceded that that might alter his position. The matter was not, however, put to the vote again and the decision already taken remained [The subsequent history of this affair can be briefly told. Ultimately, Prince Edward Island refused to enter the Union, and hence section 146 was inserted in the British North America Act providing that "it shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the Houses of the Parliament of Canada and from the Houses of the respective legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those Colonie or Provinces or any of them into the Union etc. on such terms and conditions in each case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act

etc." In 1873, forced by financial circumstances, Prince Edward Island sought and obtained admission into the Dominion with a representation of six members in the House of Commons on the ground that its population had increased since the cen us of 1861.]

Two points are clear from this brief account :—

(1) There was complete freedom of discussion at the Conference, the delegates from the same Province often taking opposite sides.

(2) The Conference was most anxious to obtain the concurrence of every unit, however small.

*Australia*

At the Australian Convention, which fr med the Commonwealth Act, the voting was not by States ; but, as against this, it must be noted that each of the States, large or small, had the same number of delegates, ten. There were in all five States at the Convention, two of them (New South Wales and Victoria) large, and the other three small in point of population. Thus, on the whole, the representatives of the smaller States were in a majority. The following extract from " The Annotated Constitution of the Australian Commonwealth " by Quick & Garran (p. 172) will serve to show that although at first the majority were inclined to rely merely on their numbers, ultimately a more accommodating spirit prevailed :—

" Then, on the 13th April (1897), commenced the last great debate on the Money Bill clauses—a debate which, tho gh it occupied but two days, was certainly the most momentous in the Convention's whole history. It established the recognition by the Convention of the fact that it was a negotiating, and not a legislative, body ; that the decision of a majority of representatives within that Chamber went for nothing unless it were a decision which was acceptable to the people of all the colonies. Had that fact and its consequences not been recognised, the present prospects of Federation must have been wrecked, and at the outset there seemed some danger that this might happen. Sir John Forrest, for the small States, announced cheerfully and often that ' we have a majority ' ; and it seemed for a time that the equal representation of the colonies in the Convention—a necessary principle in an assemblage of contracting States—would exercise an undue influence on the form of the Constitution. The recognition of the fact that they must defer to the wishes of majorities outside marked the turning point of the Convention, and the entry of the really federal spirit of compromise—a spirit which thenceforward grew, slowly and steadily through all the sittings of the Convention, and spread from the Convention to the people."

*South Africa*

In the South African Convention, the Provinces were not equally represented, nor did they vote as single units ; it must, however, be remembered that the Union of South Africa is not a Federation, but a legislative Union in which the Provinces can hardly be said to be autonomous.

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Can we adopt this mode of voting (according to which each Province votes as a single unit) in our Constituent Assembly, whether at the Union level or in the Sections ? There will be certain difficulties : first of all, what about the Indian States ? Will each of them, large or small, also vote as a single unit? If so, they will swamp the British Indian vote. There will be a similar difficulty, though not of the same order, in respect of the Chief

Commissioner's Provinces. These difficulties are not insuperable. For example some such modified rule as the following may be adopted :—

"(1) On all questions relating to the provisions of the new Constitution on which a division is challenged, the votes of the representatives of the Provinces shall be recorded Province-wise in the division-lists and of the Indian States in a separate group ; and the Chairman in announcing the result of the division shall announce separately—

(*a*) the total number of Ayes and Noes in the ordinary way, and

(*b*) the total number of Ayes and Noes among the Governors' Provinces, each such Province being counted as a single unit, affirmative, negative, or neutral according to the result of the division within the Province.

(2) No such question shall be decided without a majority both of (*a*) and (*b*)".

This is to be without prejudice to paragraph 19(vii) of the Cabinet Delegation's Statement.

The reason for special treatment of Governors' Provinces is—

(1) that unlike Indian States they have no option but to be in the Federal Union, and

(2) that unlike Chief Commissioner's Provinces they are for the most part to be autonomous.

There are other solutions possible which it is unnecessary to detail here.

**Framing of the constitution in two or more stages with an interval for criticism.**

*Canada*

The Canadian Constitution was in effect framed in two stages with an interval for provincial criticism. The resolutions of the Quebec Conference, 72 in number, were passed between October 10 and October 29, 1864. They were then submitted to the several Provincial Governments with a view to their being brought before the respective legislatures for acceptance. The result proved a great disappointment to the advocates of Federation. Only the legislature of one of the Provinces, Canada, accepted the resolutions. The Prince Edward Island legislature openly repudiated its own delegates. All that the legislatures of Nova Scotia and New Brunswick could be induced to do was to agree to appoint new delegates "to arrange with the Imperial Government a scheme of Union which would effectually ensure just provision for the rights and interests of the Provinces, each Province to have an equal voice in such delegation, Upper and Lower Canada being for this purpose considered as separate Provinces". The New Brunswick legislature asked in addition for a provision for the immediate construction of the inter-colonial railway. Newfoundland definitely refused to come into the Union and is still outside. In December 1866, the new delegates of Canada, Nova Scotia and New Brunswick met at the Westminster Palace Hotel in London and reconsidered the Quebec resolutions. Certain modifications were found necessary to make them more acceptable to the several Provinces. The 69 modified resolutions formed the basis of the British North America Act. In effect, therefore, the draft was prepared in two stages, first at the Quebec Conference in 1864 and then at the Westminster Palace Hotel Conference in 1866, with an interval for criticism by the provincial legislatures.

*Australia and South Africa*

In Australia and South Africa, the same plan was deliberately adopted from the very start. The Australian Convention first met at Adelaide on March 23, 1897. The proceedings lasted a little more than a month and at the end a Bill was settled, which, though it did not represent the unanimous voice of the delegates, at least bore witness to a gradual *rapprochement* among them which promised well for the future. The next session was held at Sydney in September 1897. During the interval the Bill was considered in the various State Parliaments. The last session was held at Melbourne between January 20, 1898, and March 17, 1898, from which the Bill emerged in its final shape. Thus, ample time was given to the several States to criticise the first draft before the final form of the Bill was settled.

Similarly, in South Africa the Convention held its first session at Durban in October 1908; and then adjourned to Cape Town where it completed the first draft by the end of the first week of February, 1909. The Bill was then submitted to the Parliaments of the four Colonies for approval. The final session was held at Bloemfontein which considered the various amendments proposed by the several Parliaments; by June 1909, the new Constitution had been accepted by all the four Colonies.

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These precedents show another way in which provincial co-operation can be secured: the drafting of the Constitution must be done in two or more stages with an interval for criticism in the various Provinces.

**First draft of Provincial Constitution by Provincial Committees.**

So far as India is concerned, yet another way which suggests itself is that the initial drafting of the provincial Constitutions should, where possible, be entrusted to Committees of the Sections consisting only of representatives of the particular Province concerned. The draft can then be considered by the Section as a whole. Thus, the provincial Constitution for Assam may first be drafted by the Assam representatives in Section 'C' and, after an interval for criticism by the Assam legislature, the Section as a whole may consider the draft and settle the final form of the Bill.

## II. Choice of the Chairman

The Convention that framed the Constitution of the United States met in Philadelphia on May 25, 1787. Its first duty was to choose a Presiding Officer. "As president of the state in whose capital the convention was meeting, as well as by virtue of his age and reputation, Franklin might have considered himself entitled to that honour. But when the session opened on the morning of the twenty-fifth with a majority of the states in attendance, Robert Morris on behalf of the Pennsylvania delegation formally proposed George Washington for president. Franklin himself was to have made the nomination, but as the weather was stormy he had not dared to venture out. No other names were offered, and the convention proceeded at once, but formally, to ballot upon the nomination. Washington was declared to be unanimously elected, and was formally conducted to the chair by Robert Morris and John Rutledge." ("The Framing of the Constitution" by Farrand, *p.* 55.) It must be remembered that Benjamin Franklin was at that time a very old man, 81 years of age, so feeble that all his speeches had to be read for him by his colleague Wilson. Though highly respected, he does not

appear to have taken a very prominent part in the proceedings except for a memorable observation which he made at the end while the last members were signing the completed Constitution. "Dr. Franklin looking towards the President's Chair, at the back of which a rising sun happened to be painted, observed to a few members near him that Painters had found it difficult to distinguish in their art a rising from a setting sun. I have, said he, often and often in the course of the Session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting: But now at length I have the happiness, to know that it is a rising and not a setting Sun." (Farrand, *op., cit., p.* 194.)

George Washington, who was chosen President, was 55 years of age at the time and at the height of his popularity. The successful outcome of the Revolution had silenced all criticism of his conduct of the war and his retirement to Mount Vernon had appealed to the popular imagination. The feeling towards him was one of devotion, almost of awe and reverence. Of his part in the making of the Constitution, Farrand writes: "The parts which were taken by various men in the debates of the convention will be partially brought out in describing the proceedings, but it seems worth while to notice one man who took no part in the discussions but whose influence is believed to have been important. That man was George Washington, the presiding officer of the convention. His commanding presence and the respect amounting almost to awe which he inspired must have carried weight, especially in so small a gathering in the 'long-room' with the president sitting on a raised platform." (Farrand, *op., cit., p.* 64.)

A striking instance of Washington's personal influence may be found in an incident which occurred towards the close of the Convention. Just before the question was to be put, upon the adoption of the completed Constitution, one of the delegates said that if it was not too late, he would like to see the ratio of representation in the Lower House of the Congress changed from one for every 40,000 inhabitants to one for every 30,000 inhabitants. This suggestion had been made at an earlier stage in the Convention and had been rejected. Nevertheless, when Washington rose to put the question, he said that although he recognised the impropriety of his speaking from the Chair, he felt this amendment to be of such consequence that "he could not forbear expressing his wish that the alteration proposed might take place". Not a single objection was made and the change was then unanimously agreed to.

### *Canada*

The Quebec Conference met in what was then a part of the Province of Canada. The Prime Minister of Canada, Sir Etienne Pascal Taché, aged 69, was elected Chairman, being proposed by Gray (Prince Edward Island) and seconded by Tilley (New Brunswick).

### *Australia*

Unlike the Philadelphia Convention and the Quebec Conference, the Australian Convention held its sessions in public and we have therefore a full record of what took place. The first session was held in Parliament House, Adelaide, South Australia, on Monday, March 22, 1897. The delegates met in the House of Assembly Chamber at Parliament House, Adelaide. The Clerk of the Legislative Council of Adelaide read out the various Proclamations relating to the meeting of the Convention and the certificates of appointment of the representatives to the Convention for the various States. He

then requested the delegates to attend at the table and sign the roll. Thereafter, Sir Joseph Abbot, a delegate from New South Wales, proposed Mr. Kingston, Premier of South Australia, for the office of President in the following terms: "It is a very pleasing duty to me to follow what has been the established precedent in reference to these Conventions. For many years past in the colonies in which they have been held, invariably the Premiers of the colonies have been chosen to preside over the meetings of the Conventions, and that is a rule there is no justification in departing from on the present occasion." Sir Graham Berry, a delegate from Victoria, seconded the nomination: "Following the precedents which have always prevailed in the Australian Colonies, that the Premier of the Colony in which the Convention is being held shall preside, I think the motion will be unanimously carried and that Mr. Kingston's election will meet with the approval of the delegates." There was no other nomination and accordingly Mr. Kingston was elected President.

*South Africa*

The South African Convention held its first session in Durban (Natal) on October 12, 1908. Lord (then Sir Henry) de Villiers, Chief Justice of the Cape Colony, was chosen President and Ex-President Steyn of the Orange River Colony was elected Vice-President. The Chairman had the right of speaking and voting and in the event of an equality of votes he had a casting vote. In acknowledging the honour conferred upon him, he said, among other things, " Failure is certain if we start with a feeling of distrust and suspicion of each other and with the sole desire to secure as many advantages as we can for our respective political parties or our respective Colonies. Success is certain if we give each other our fullest confidence and act upon the principle that, while not neglectful of the interests of those who have sent us here, we are for the time being representatives of the whole of British South Africa. " (" The Inner History of the National Convention of South Africa " by Walton, *p.* 40).

III. Language to be used

The question of language arose in an acute form in the South African Convention. It was found that though all the members could follow speeches in the English language, some found a difficulty in expressing themselves in any tongue but Dutch. It was therefore arranged that Dr. Bok, the Secretary to the Prime Minister, should attend the meetings and act as interpreter. General Botha spoke almost invariably in Dutch and so did several other delegates, while some of the bilingual speakers used either the one language or the other. Whenever Dr. Bok's services were requisitioned, the speech took twice as long to deliver as when spoken in English. However, there was the best possible understanding among the members on this subject throughout the whole of the sittings and no difficulty whatever was experienced. (Walton, *op., cit., pp.* 37, 38).

IV. Whether Sessions should be open or in Camera

*U. S. A.*

The sessions of the Philadelphia Convention of 1787 which framed the Constitution of the U. S. A. were strictly secret and sentries were planted without and within the building to prevent any person from coming near. The Convention also adopted a rule that " nothing spoken in the House be

printed or otherwise published or communicated without leave ". There were of course many rumours current as to what was being done in the Convention and at one stage when serious differences of opinion threatened to disrupt the Assembly, the following inspired item of news appeared in the press : " So great is the unanimity, we hear, that prevails in the Convention, upon all great federal subjects, that it has been proposed to call the room in which they assemble—' Unanimity Hall '. " It is related that on one occasion quite early in the proceedings one of the members dropped his copy of the agenda on the floor and it was picked up by another delegate and handed to the President, General Washington. After the day's debate, the President rose from his seat and reprimanded the member for his carelessness : " I must entreat Gentlemen to be more careful, lest our transactions get into the newspapers and disturb the public repose by premature speculations. I know not whose Paper it is, but there it is (throwing it down on the table), let him who owns it take it. " He then bowed and quitted the room. None dared to own the paper.

The reason for adopting this rule of secrecy was that any publication of the opinions of members " would be an obstacle to a change of them on conviction and might furnish handles to the adversaries of the result of the meeting ".

*Canada*

At the Quebec Conference which framed the basis of the Canadian Constitution, correspondents representing Canadian, British and American newspapers submitted a memorial asking for facilities to report the proceedings. The Secretary to the Conference told them in reply :

> " Whilst the members of the Conference fully appreciate the motives by which you are actuated in your communication, and are equally sensible of the deep interest naturally felt by the people of the several British North American Provinces in the objects of the Conference, they cannot but feel that it is inexpedient, at the present stage of the proceedings, to furnish information which must, of necessity, be incomplete; and that no communication of their proceedings can properly be made until they are enabled definitely to report the issue of their deliberations to the Governments of the respective Provinces. " (Pope's " Confederation Documents ", *p.* 11.)

*Australia*

On the first day of the Adelaide session, one of the members gave notice of a motion that the proceedings of the Convention be open to the public except when otherwise ordered. The motion was taken up the next day and the speeches made are reproduced below :—

" Mr. Holder : I move :

> *That the proceedings of the Convention be open to the public except when otherwise ordered.*

I submit this motion, feeling assured that every member of the Convention will wish the proceedings to be as public as possible. We should take the public into our confidence at the earliest possible moment, and, while

availing ourselves of the other powers in this Convention, the educative influences that will be exercised by admitting the public to this Convention will be largely promoted.

Sir Richard Baker : I second the motion.

Sir George Turner : I desire to ask whether the proceedings of the Convention will include the Convention in Committee.

Mr. Barton: Select Committee ?

Sir George Turner : No ; I understand that in Select Committee it would be desirable that we should discuss matters in private, but what I desire to make clear is whether, when the Convention goes into Committee, the proceedings of the Committee as a whole should be open to the public. I think that should be so ; and I wish to know if the words are sufficiently wide. If they are I shall be perfectly satisfied.

The President: I take it that the words are sufficiently wide for the Committee of the whole, but not for Select Committees.

Question resolved in the affirmative. " (Official Report of the National Australian Convention Debates, Adelaide, 1897, *p.* 8.)

Of an earlier Convention at Sydney in 1891, which also decided to hold its meetings in public, Egerton remarks :

" Rightly or wrongly—rightly from the point of view of future edification, perhaps wrongly in the interests of the swift dispatch of business—it was decided that the Convention should sit with open doors, though the actual work of drafting was done informally by sub-committees. "

*South Africa*

The South African Convention copied the U. S. A. and Canadian precedents rather than the Australian :

" Unlike its Australian predecessors, the (South African) Convention sat in secre , and therefore no reference to its proceedings can be made without a breach of confidence. It is impossible to doubt the wisdom of this procedure. The questions handled were so delicate, and the feeling upon them throughout the country so divided and so acute, that it is not conceivable that an agreement could have been reached in public. It is well known that, on more occasions than one, feeling in the Convention itself ran high. Its work was only brought to a successful issue because no appeal was possible to the gallery. The public was brought to recognise that the result must in any case be a delicately-balanced equipoise. and, instead of being daily inflamed, was content to wait and pass a final judgment on the completed work. Thus the men who represented it were emboldened to act calmly and with courage, and with a due sense, not only of the immediate present, but of their responsibility towards future generations. As it was, and as must no doubt always be the case in such matters, much was settled outside the Convention itself. Compromises that seemed impossible in the formal atmosphere of the Convention room, settled themselves sooner or later through the medium of personal influences. This process of gradual solution, which was incessant throughout the Convention, would have been impossible in the glare of publicity. " (" The Union of South Africa ", by Brand, *pp.* 39-40).

## V. Resignation of Members, Controverted Elections and filling of Casual Vacancies

There is no provision in the Cabinet Delegation's Statement of May 16, 1946, as to the manner in which a member of the Constituent Assembly may resign his seat or the circumstances or manner in which an election may be challenged or the manner in which a vacancy ari ing from death, resignation or other cause is to be filled. It cannot be assumed that members have an inherent right of resignation : for example, a member of the House of Commons in England has no such right, although in certain circumstances, prescribed by law, his seat is vacated. It may well be that until there is some rule providing for resignation or vacation of seat, a member once elected to the Constituent Assembly continues as such. Moreover, as the Constituent Assembly is an extra-legal body and its resolutions do not immediately affect any legal rights, it is not certain that the ordinary courts of law will have jurisdiction to entertain election disputes. It may be mentioned that the House of Commons provides for its own proper constitution, whether in the matter of filling vacancies, or determining election disputes outside the jurisdiction of the courts, or determining the right of its members to sit and vote in cases of doubt. In all these matters, therefore, the Constituent Assembly will have to make its own rules to fill any gaps.

## VI. Grouping

It has sometimes been contended that freedom to opt out of a Group already formed is not the same thing as freedom to form a Group and that there is therefore a conflict between what is recommended in paragraph 15 (5) of the Cabinet Delegation's Statement of May 16, 1946 and what is g anted in paragraph 19 (v) and (viii) The conflict, if any, is of a kind that can be reduced or removed, *inter alia* by suitable drafting technique. For example, the new Constitution, like the Act of 1935, may be framed in Parts : one Part, say Part I, setting out the Provincial Constitutions, another Part, say Part II, setting out the Group Constitutions, and so on. As under the Act of 1935, the several Parts need not come into force on the same date ; it may be provided that Part I shall come into force first and that Part II shall not come in o force as regards any particular Province, until the Legislative Assembly of that Province formed after the first general election held under Part I has by resolution accepted Part II. An affirmative resolution would mean that the Province agrees to form the proposed Group ; a negative resolution would be equivalent to opting out of the proposed Group. On this plan, therefore, freedom to form a Group as well as freedom to opt out accord ng to the Cabinet Delegation's Statement is, in effect, secured to each Province. There may be other plans possible, *e.g.*, those suggested under the head of Provincial Co-operation above ; all these are matters of procedure to be discussed in due course.

## VII. Interpretation

The Cabinet Delegation's Statement of May 16, 1946 was not drafted with the fullness or precision of a Statute. But it has come to be looked upon as a kind of fundamental law and questions of interpretation of various words or phrases used in the document are bound to arise from time to time in the Constituent Assembly. In the House of Commons, there is an officer known as the Speaker's Counsel to assist the Speaker and

the House generally in legal and quasi-judicial matters. On this analogy, the Constituent Assemb y may have a special officer or tribunal of its own to assist in questions of interpretation or, if it thinks fit and if the judges of the F.deral Court agree, may refer any such questions to the judges for an advisory opinion.

## VIII. Procedure Generally.

As regards general procedure, the Australian Convention adopted the standing orders and practice of the South Australian Assembly. Following this precedent, the Constituent Assembly may adopt, with suitable modifications, the rules and standing orders of the Indian Legislative Assembly.

# OPTING IN AND OPTING OUT

1. **The case of Queensland.**—The following extracts from the "Historical Introduction to the Constitution of the Australian Commonwealth" by Quick and Garran are relevant. In order to understand the extracts it may be of assistance to remember that the Convention, which drafted the Australian Commonwealth Constitution, began its first session in 1897, the idea of such a Convention having been decided upon at a Conference of Premiers in 1895.

EXTRACTS

*The Premiers' Conference.*—"The Conference of Premiers met at Hobart, on 29th January, 1895, the Premiers present being Mr. Reid (New South Wales), Mr. (afterwards Sir) George Turner (Victoria), Mr. (afterwards Sir, Hugh M. Nelson Queensland), Mr. C. C. Kingston (South Australia), Sir Edward Braddon (Tasmania), and Sir John Forrest (Western Australia). The following resolutions, submitted by Mr. Reid, were carried :—

(1) That this Conference regards Federation as the great and pressing question of Australasian politics.

(2) That a Convention, consisting of ten representatives from each colony, directly chosen by the electors, be charged with the duty of framing a Federal Constitution.

(3) That the Constitution so framed be submitted to the electors for acceptance or rejection by a direct vote.

(4) That such Constitution, if accepted by the electors of three or more colonies, be transmitted to the Queen by an Address f om the Parliaments of those colonies praying for the necessary legislative enactment.

(5) That a Bill be submitted to the Parliament of each colony for the purpose of giving effect to the foregoing resolutions.

(6) That Messrs. Turner and Kingston be requested to prepare a draft Bill for the consideration of this Conference. (*pp.* 158-159, *op. cit.*) * * * *

"On 6th February the draft Bill prepared by Mr. Turner and Mr. Kingston was 'considered, amended, and agreed to as the draft of a type of Bill suitable for giving effect to the resolutions of the Conference'. Mr. Reid intimated that 'so soon as practicable after the reassembling of the New South Wales Parliament his Government would introduce a measure providing for the chief objects of the Bill as defined in the draft'. Messrs. Turner, Kingston, Nelson and Sir Edward Braddon intimated that as soon as New South Wales had passed the Bill they would follow suit—Mr. Nelson, however, reserving the right to dispense with the direct reference to the electors." *p.* 159 *op. cit.*) * * *

"New South Wales having redeemed her pledge and led the way, other colonies were not slow to follow". (*p.* 161 *op. cit.*) * * * *

"Queensland and Western Australia were now being waited for. But Sir Hugh Nelson, the Queensland Premier, had meanwhile discovered difficulties in the way of passing a Bill in the form agreed upon. Queensland was tripartite in interest, the North and the Centre being arrayed against the South in their demand to be erected into separate colonies. This question of separation became interwoven with the question of Federation. The North and the Centre looked forward to Federation, not only for its own sake, but also as a step towards sub-division ; whilst Brisbane and the South feared that their trade would suffer from open competition with New South Wales and its metropolis. Each

of the three divisions preferred to have separate representation in the Convention rather than to trust to the chances of a single electorate. Moreover, the Government and a large section of the Parliament favoured Parliamentary rather than direct election. Sir Hugh Nelson accordingly provided in his Bill that the Queensland representatives should be elected by the members of the Legislative Assembly, grouped according to the three great districts. The Premiers of the four colonies which had substantially adopted the model Bill joined in a remonstrance against this departure from the Hobart understanding; but without avail. Sir Hugh Nelson proceeded with the Bill, but somewhat half heartedly, without committing himself to the whole of the process, and reserving to the Parliament the right to send the Constitution to the people or not, as it pleased. He made no profession of being an ardent federalist, but argued that it could do no harm to have a voice in framing the Constitution, which they would afterwards be free to accept or reject. On the motion for the second reading, Mr. G. S. Curtis moved an amendment affirming that no Enabling Bill would be acceptable which did not provide for the election of representatives by direct popular vote. This was negatived by 36 votes to 26 and the Bill passed the Assembly in July, 1896. But in the Council (*i.e.*, the Upper House) it was not unnaturally claimed that if the election was to be Parliamentary, both Houses should take part in it; and accordingly the Bill was returned to the Assembly amended to that effect. The Assembly, however, denied the representative character of a nominee House. The difference between the Houses proved irreconcilable; and in November—though Mr. Reid journeyed to Brisbane to assist a settlement—the Bill was laid aside." (*p.* 162 *op. cit.*)

Thus, Queensland opted out of the Convention, so to speak, at the beginning. But the sequel is interesting. The Convention, with representatives from the other States, proceeded with the Constitution-making without Queensland. Then there was another Premiers' Conference in 1899, after the Constitution had been drafted, for the purpose of considering certain suggestions made by New South Wales. At this Conference Queensland was represented by its new Premier. What happened when the amended draft of the Constitution was sent round to the States for adoption is thus described:—"The real interest now centred in Queensland. The Premier, Mr. Dickson, ably supported by his colleague, Mr. R. Philp, took up the cause with enthusiasm * * * One difficulty to be faced was that Queensland—though it had been ably represented at the 1891 Convention, whose work was the basis of the draft Constitution now presented—had, through the fault of its politicians, taken no part (except through its Premier, Mr. Dickson, at the Premiers' Conference) in the actual framing of the Constitution." Ultimately, however, in spite of this drawback the amended draft Constitution was accepted by Queensland at a referendum by 38,488 votes against 30,996.

Thus, although Queensland opted out at the beginning and deprived itself of a voice in the making of the Constitution, it opted in at the end with a sense of grievance against those who were responsible for the initial opting out.

2. **The case of Prince Edward Island and Newfoundland.**—"The task of framing the resolutions on which the British North America Act was based—the task so successfully performed at Quebec in October, 1864—was achieved by the thirty-three men who in Canada today are always spoken of with veneration as the Fathers of Confederation." (Porritt's "Evolution of the Dominion of Canada", *p.* 208.)

"At the Quebec Convention the United Provinces (Quebec and Ontario) were represented by twelve delegates ; Nova Scotia by five ; New Brunswick by seven ; Prince Edward Island by seven ; and Newfoundland by two." (*op. cit. p.* 209.)

"These resolutions (*i.e.*, the Quebec resolutions) having been adopted by the legislatures of the United Provinces (Quebec and Ontario), Nova Scotia†, and New Brunswick†, they were embodied in the British North America Act which was passed by the Imperial Parliament". And, in a footnote, "Newfoundland and Prince Edward Island withdrew from the negotiations after the Quebec Conference, although Prince Edward Island came into Confederation in 1873". (*op. cit., p.* 200.)

Owing to the withdrawal of Prince Edward Island and Newfoundland, the British North America Act, 1867, contains two sections providing for their subsequent admission :—

*Section* 146 :—

"146. It shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of the Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, etc."

*Section* 147 :—

"In case of the admission of Newfoundland and Prince Edward Island or either of them, each shall be entitled to a representation, in the Senate of Canada, of Four Members, etc."

"In 1873, the Dominion secured a new member by the entrance into it of Prince Edward Island under the terms of the same section of the British North America Act as that which applied to British Columbia. In this case financial exigencies effected what had hitherto proved impossible. * * * In 1895 Newfoundland, under the stress of financial failures, sought to join the Confederation ; but the Dominion Ministry was not quick to seize the proffered hand, and the opportunity, once missed, has never recurred." (Introduction to Egerton's "Federations and Unions in the British Empire", *p.* 38.)

It is clear from these extracts that both Prince Edward Island and Newfoundland participated in the Quebec Convention, which framed the basis of the Canadian Constitution ; they subsequently "opted out" and remained outside the Federation ; then owing to financial difficulties, Prince Edward Island "opted in", but Newfoundland although at one time desirous of opting in, lost the opportunity and still remains outside the Federation.

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†Actually, the Quebec Resolutions were adopted only by the legislature of the United Provinces. They were subsequently adopted, with slight modifications, by the delegates of Nova Scotia and New Brunswick, as well as of the United Provinces to the Westminster Palace Hotel Conference in London and were then embodied in the British North America Act. (See Egerton's "Federations and Unions in the British Empire", Introduction *pp.* 31—33).

# LINGUISTIC PROVINCES AND REGIONAL ARRANGEMENTS (I)

One of the most difficult problems in the framing of India's new Constitution will be to satisfy the demand for linguistic Provinces and other demands of a like nature without creating a large number of new Provinces. In the first place, it may be contended that the creation of new Provinces is inconsistent with the Cabinet Delegation's statement of May 16; for, sub-clause (*v*) of paragraph 19 lays down that " Provinces should have power to opt out of groups in accordance with the provisions of sub-clause (*viii*) ", and sub-clause (*viii*) goes on to say that " such a decision shall be taken by the legislature of the Province after the first general election under the new Constitution ". These statements may be held to imply that the integrity of the existing Provinces is to be preserved at least until the first general election under the new Constitution ; for, otherwise, the new legislature will not be of *the Province* and the right of opting out given to it will be defeated. It may therefore be urged that the existing boundaries of the several Provinces are not to be disturbed under the new Constitution at least initially. But, whether permissible under the Cabinet Delegation's scheme or not, the creation of a number of new Provinces with separate governmental heads etc. will mean an increase of expenditure as well as a fragmentation of financial resources. The problem will therefore arise how the desire for separation of distinct racial or linguistic areas can best be met without creating separate Provinces. Similar problems have arisen elsewhere and it is instructive to see how they were solved or sought to be solved.

## I. HUNGARY BEFORE WORLD WAR I

Between the Compact of 1867 and the end of World War I, Austria and Hungary were separate States under a common monarch. In Indian terminology, we may describe them as two Provinces forming a loose Union. The head of the Union was styled " Emperor of Austria etc., and Apostolic King of Hungary"; the Union dealt with the three common subjects of foreign affairs, defence, and finance. The Union executive consisted of three Ministers—one for each of these common subjects—appointed by the Emperor-King. The Union legislature, if it may be so called, consisted of two delegations, one from Austria and the other from Hungary, each composed of 60 members, of whom 20 were chosen by the Upper and 40 by the Lower Chamber of each of the two provincial legislatures, the delegations being re-elected every year. The delegations were summoned to meet by the Emperor-King at least once a year. The two delegations sat separately except when they disagreed about any measure, in which case there had to be a joint session.

Turning now to Hungary as a " Province ", we find that the provincial head was, as already stated, the same as the head of the Union, being styled in that capacity as the King of Hungary. As head of the Province, he had power to summon, adjourn and dissolve the provincial legislature (that is to say, the Hungarian Parliament) and to appoint the provincial Ministers. The provincial legislature was composed of two Chambers, the Upper, known as the Table of Magnates and the Lower, known as the Table of Deputies. The Upper Chamber contained a large number of hereditary members as well as a certain number of others; the Table of Deputies contained 453 elected members

Now comes a particularly interesting feature. Within the " Province " of Hungary was the sub-Province of Croatia inhabited mainly by the Croats, a race distinct from the Magyars of Hungary. This sub-Province had its own legislature, the Croatian Diet, consisting of a single Chamber of 125 members. Certain subjects, including provincial finance, were reserved to the " provincial legislature " (that is, the Hungarian Parliament) as being of common concern to all parts of the Province, including Croatia. Other subjects were left to the Croatian Diet. The head of the sub-Province was the same as that of the Province, namely, the King of Hungary, who in that capacity was styled King of Croatia. As head of the sub-Province, he summoned, adjourned and dissolved the Diet and also appointed the Croatian executive. The Croatian Diet had the right to elect 40 members to the Lower Chamber of the provincial legislature (that is, the Hungarian Parliament) and 3 of the non-hereditary members of the Upper Chamber. The Deputies from Croatia in both these Chambers were chosen for the term of the Hungarian Parliament, but in case the Croatian Diet was dissolved earlier, they were elected afresh. Further, the provincial Cabinet, that is to say, the Hungarian Cabinet, always contained a member specially designated to supervise relations with Croatia. What was more, the provincial delegation, that is to say, the Hungarian delegation to the Union legislature, which, as already mentioned, consisted of 60 members, had to contain 5 Croatians. Croatian was the official language in Croatia and the Croatian Deputies spoke in their native tongue in the Hungarian Parliament.

To summarise, if we may call Austria-Hungary of the pre-1914 era a Union, Hungary a Province of the Union, and Croatia a sub-Province of Hungary, the relations between the Union and the Province and the sub-Province were briefly these :—

(1) The Union, the Province and the sub-Province had a common head, the Emperor-King.

(2) Each had its own legislature and executive dealing with its own subjects.

(3) The sub-Province had a special Minister in the provincial Cabinet.

(4) The sub-Province had its own contingent of members, both in the provincial legislature and in the Union legislature.

(5) The sub-Province had its own official language.

It is interesting to note that besides Austria and Hungary the Union contained the territory of Bosnia and Herzegovina. It was found impracticable to divide this territory between Austria and Hungary and neither half of the monarchy would have consented to its annexation as a whole by the other. The administration of the territory was therefore made a joint affair—a Union subject under the Union Finance Minister.

## II. IRELAND UNDER THE GOVERNMENT OF IRELAND ACT, 1920

The Government of Ireland Act, 1920, which divided Ireland into Northern Ireland and Southern Ireland, proved a dead letter in Southern Ireland (because the South objected to partition) and has survived in Northern Ireland only in a modified form. Nevertheless, the scheme of the Act is interesting and well worth examination, for it may work where there s a common desire for separatio-

The Act divided Ireland into two parts, six counties in the north-east forming Northern Ireland and the remaining twenty-six counties forming Southern Ireland. The proportion of Protestants to Catholics in Northern Ireland was about 2 : 1 and in Southern Ireland about 1 : 19. Each part had its own legislature with certain limited powers. Speaking broadly, defence, foreign affairs, foreign trade, customs duties, and currency were among the subjects not included therein. In addition, there was a Council of Ireland for the whole of Ireland. It consisted of a nominated President and 40 elected members, 20 from the legislature of Northern Ireland and 20 from the legislature of Southern Ireland. This Council had legislative power in respect of certain subjects of common concern, requiring uniform administration, such as railways, fisheries, and contagious diseases of animals.

Both parts of the island had a common local executive head, the Lord Lieutenant, and he had a Privy Council of Ireland to aid and advise him in the exercise of his functions. But—and this was the most interesting feature of the scheme—there were separate Cabinets for Northern Ireland and Southern Ireland, each Cabinet being described as an Executive Committee of the Privy Council of Ireland. The Lord Lieutenant was to be advised by the Cabinet of Northern Ireland in regard to the affairs of Northern Ireland and by the Cabinet of Southern Ireland in regard to the affairs of the South. If we may translate this scheme into current Indian phraseology, the United Kingdom of Great Britain and Ireland formed a Union, of which Ireland was a Province. Defence, foreign affairs, foreign trade, customs and currency were among the Union subjects. The Province had two sub-Provinces, Northern Ireland and Southern Ireland. The executive head of the Union was His Majesty the King, that of the Province and of each of the sub-Provinces was a Lord Lieutenant appointed by His Majesty. Each sub-Province had its own legislature and its own Cabinet to deal with its own list of subjects, and the Province had, in addition, a legislature to deal with provincial subjects of common concern to both the sub-Provinces. The two Cabinets formed Committees of a single Privy Council for the whole Province. Further, each sub-Province had its own contingent of members in the Union Parliament.

Which were the subjects of common concern ? Three were enumerated in the Act itself, namely, railways, fisheries and the administration of the Diseases of Animals Acts ; others could be added by identical Acts of the two sub-provincial legislatures.

The imposition and collection of customs duties and certain other taxes was a function of the Union. The provincial share of the amount collected was to be calculated and, after certain deductions, to be apportioned between the sub-Provinces by a Joint Exchequer Board consisting of two members appointed by the Union Treasury and one member appointed by each of the sub-provincial Treasuries and a Chairman appointed by the head of the Union.

These, in brief outline, were the regional arrangements which prevailed at one time in Hungary and were at one time contemplated in Ireland. It may be possible to adapt them to Indian conditions so as to meet to a considerable extent the desire for linguistic Provinces without the actual creation of new Provinces. Briefly, where an existing Province contains distinct racial or linguistic areas, they can be made sub-Provinces within the Province on the analogy of Croatia in Hungary before World War I or the two parts of Ireland under the Act of 1920. Taking, for example, the case of Madras, we may consider some such scheme as the following :—

(1) Madras will continue as a single Province with its existing boundaries.

(2) For the more convenient transaction of the business of the Provincial Government, the territories of the Province will be divided into two sub-Provinces, North Madras and South Madras, and the district of Madras (comprising the city and its neighbourhood), the district of Madras being "joint territory" between the two sub-Provinces.

(3) Each sub-Province will have its own legislature and its own Cabinet to deal with its own affairs..

(4) Affairs of joint concern, such as the administration of the Madras district, will be dealt with by a joint legislature containing an equal number of members from the sub-provincial legislatures *plus* an appropriate number from the district of Madras and by a joint Cabinet containing an equal number of members from the sub-provincial Cabinets *plus* one Minister from Madras district. All the legislatures, whether separate or joint, will be regarded merely as branches, for certain special purposes, of the provincial legislature and similarly all the Cabinets, whether joint or separate, will be regarded as Committees, for special purposes, of the provincial Council of Ministers. The Cabinets may be chosen on the Swiss plan, all the legislatures and Cabinets having the same fixed term.

(5) The executive head of the Province will also be the executive head of the sub-Province. For convenience, we may continue to call him the Governor, although he may no longer be appointed by the Crown as at present.

(6) The Governor will be advised by the Cabinet of North Madras in affairs relating solely to North Madras; by the Cabinet of South Madras in the affairs of the South; and by the joint Cabinet in affairs of joint concern. But all executive action will be expressed to be taken in the name of the Governor of the Province and be deemed to be the executive action of the Government of the Province. How and by whom he is advised on a given matter is a domestic detail with which the public outside has no concern.

(7) Similarly all legislation, whether enacted by the legislature of a sub-Province or by the joint legislature, will be described as and deemed to be legislation of the provincial legislature. Through which particular set of legislators the provincial legislature acts for a given purpose is again a domestic detail.

(8) Which subjects are to be regarded as matters of joint concern and which are to be regarded as the sole concern of each sub-Province will be prescribed by the rules of business to be made by the Governor on the advice of the joint Cabinet.

(9) Each sub-Province may have its own official language or languages.

(10) Provincial representation in the Upper Chamber of the Union Legislature will be apportioned between the sub-Provinces and the district of Madras in the ratio, say, of 2 : 2 : 1. Thus, if the Province of Madras should be entitled to send 20 members

to the Union Council of State, 8 will be from North Madras, 8 from South Madras and 4 from the district of Madras. In the Lower Chamber, the representation will probably be based on population and no special rule of apportionment will be needed.

Such are the broad outlines of the plan. It has several advantages :—

(*a*) It meets to a large extent the demand for separate linguistic Provinces. By extending or reducing the list of joint subjects, the degree of separation can be varied in either direction to any desired extent, so that the scheme is flexible.

(*b*) It avoids unnecessary overhead expenditure.

(*c*) It can be extended to the administration of excluded or partially excluded areas within a Province ; of the predominantly Muslim and the predominantly non-Muslim areas in Bengal and the Punjab ; of the two valleys and the hill districts in Assam ; and, generally speaking, of distinct racial or other areas in any Province.

(*d*) It does not create new Provinces and is indeed no more than a particular way of administering existing Provinces.

Among the defects of the plan is that it does not provide for a case where the linguistic or other area is spread over two or more Provinces. But even in such a case, the demarcation of the portions of the area in each Province, which the plan compels, would be a useful step towards their subsequent integration when the creation of new Provinces becomes possible. Meanwhile, even if they are in different Provinces for the time being, they can act together by mutual agreement in cultural and social matters, implementing the agreement, if necessary, by identical Acts of their respective legislatures. The plan may have other defects ; it is set out here only for consideration as one suggested by certain precedents in other parts of the world.

# LINGUISTIC PROVINCES AND REGIONAL ARRANGEMENTS (II)

The plan suggested in the earlier pamphlet on this subject may at first sight seem cumbrous, although the actual provisions in the Constitution necessary to give effect to it are very few. The detailed arrangements will, in fact, have to be secured, not by provisions in the Constitution itself, but by rules of business framed under the Constitution. If any particular arrangement is found to be needlessly cumbrous, it can be altered immediately by altering the relevant rule of business, no amendment of the Constitution being required.

An alternative plan is suggested by an analysis of the governmental machinery in the United Kingdom. For this purpose, it is useful to study the administrative arrangements that obtained in that country, say, in 1912, when the whole of Ireland was still a part of the United Kingdom. In the United Kingdom Cabinet of 1912, there were fifteen members concerned with domestic administration. Of these, only four dealt with subjects of common concern and exercised their administrative powers uniformly in each of the three parts of the United Kingdom—*i.e.*, England (including Wales), Scotland and Ireland. Of the rest, three were exclusively English officials, in the sense that their functions were confined to England ; one (the Secretary of State for Scotland) had functions only in Scotland ; one (the Chief Secretary to the Lord Lieutenant) had functions only in Ireland ; others had some functions in one part, and some in more than one. But all fifteen were members of one Cabinet, responsible to one Parliament. There was, besides, another member in a peculiar position : the Secretary of State for India. His functions related to the administration of territory not included in the United Kingdom at all and not sending any representatives to Parliament. He was therefore provided with a Council designed to give him the necessary local knowledge, and although responsible to Parliament, he could not act, in certain matters, except with the concurrence of a majority of the Council.

On the legislative side also, although in theory there is but one Parliament, in practice there is some measure of regionalism. Thus all Bills relating exclusively to Scotland are referred, after second reading, to a Grand Committee consisting of the whole body of Scottish members, with the addition of 15 others specially appointed for each Bill. Moreover, although the legislature itself is unitary, the resulting legislation is not: for example, out of 458 public Acts passed during the decade 1901-1910, only 252 applied uniformly to the whole of the United Kingdom [see Marriott's "The Mechanism of the Modern State", Vol. I, *pp.* 166, 167].

Let us apply this plan to a Province like Assam and consider the arrangements that would result. Assam comprises two sharply-contrasted valleys, the Assam Valley and the Surma Valley, besides certain tracts forming the " excluded areas " and certain other tracts forming the " partially excluded areas " of the Act of 1935. The " excluded areas " in Assam do not send any representatives to the provincial legislature and are, to that extent, in the same position as India with respect to the Parliament of the

United Kingdom. Proceeding on the United Kingdom analogy, we should therefore have for Assam some such arrangements as the following :—

(1) There would be a single Cabinet responsible to the provincial legislature.

(2) Some members of the Cabinet would deal with subjects of common concern to all parts of the Province and would, in respect of these subjects, exercise functions over the whole Province, including the excluded and partially excluded areas as well as the two Valleys.

(3) There would be a Minister or group of Ministers for the Assam Valley to deal with the other subjects for that Valley; similarly there would be another Minister or group of Ministers to deal with the same subjects for the Surma Valley; so too, a Minister for the partially excluded areas and a Minister for the excluded areas. These last-mentioned areas are not likely to require more than a single Minister each.

(4) As the excluded areas are not represented in the provincial legislature, the Minister for those areas might be provided with a Council of Advisers with local knowledge, whose concurrence might be made obligatory in certain matters.

(5) Legislation relating exclusively to one or more of the four regions might, by convention, be committed exclusively to representatives of the affected region or regions, representatives of the other regions refraining from taking any part in the proceedings at any stage.

These arrangements, like those mentioned in the earlier pamphlet on this subject, do not involve the creation of new Provinces, but only constitute a particular mode of administering an existing Province.

## UNION SUBJECTS (I)

Paragraph 15(1) of the Cabinet Delegation's statement, dated May 16, 1946 recommends that there should be a Union of India which should deal with the subjects of Foreign Affairs, Defence and Communications. The precise content of each of these categories has not been defined and questions will doubtless arise on this point in the course of the proceedings of the Constituent Assembly. The following references may be usfeul :—

### AMBIT OF "FOREIGN AFFAIRS"

The plain dictionary meaning of "foreign" : " Dealing with matters concerning other countries ". (New Oxford English Dictionary.)

The sense in which the term has been used in Empire Constitutions :—

(1) Section 51 (xxix) of the Australian Constitution, " External Affairs ". See Dr. Wynes's " Legislative and Executive Powers in Australia ", 1936, pp 205—222 ; also Quick and Garran's commentary on the section. These authors agree that " External Affairs " as used in the section extends to

(i) the external representation of Australia by accredited agents ;
(ii) the conduct of the business and promotion of the interests of Australia in outside countries ; and
(iii) extradition.

(2) Entry 3 of List I in the Seventh Schedule to the Government of India Act, 1935, runs :—

" External affairs ; implementing of treaties and agreements with other countries ; extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India."

The items following " external affairs " in this entry are, it may be contended, illustrative of what constitutes " external affairs ". But are they exhaustive ? For example, take immigration and emigration, or naturalisation. Both in the Australian Constitution, and in the Government of India Act of 1935, these subjects are mentioned separately from " external affairs ". [Section 51 (xxvii) and (xix) of the Australian Constitution and entries 17 and 49 of List I in the Seventh Schedule to the Government of India Act, 1935.] Does this necessarily imply that these subjects are not included in " external affairs "? Note in this connection that " the relations of the Commonwealth with the islands of the Pacific " is also separately enumerated in the Australian Constitution [section 51 (xxx)], although this is obviously " external affairs ", which shows that the enumerations are not always mutually exclusive. Note further that the Foreign Office in England deals not only with treaties and extradition, but also, *inter alia*, with nationality, naturalisation, prize courts, territorial waters, deportations, passports and visas. [" The Foreign Office " by Sir John Tilley and Stephen Gaselee, 1933, *p.* 287]. In nationality cases, the Foreign Office works very closely with the Home Office (*op. cit.*, *p.* 291). As will be pointed out presently, administrative practice may be relevant in this matter.

To what extent can foreign trade and commerce be said to be comprised in " foreign affairs " ? English practice in this respect which we may note for our guidance, is as follows :

The general relations of the United Kingdom with foreign countries, in which economic questions play an important part, are a special responsibility of the Foreign Office ; th trading interest of the United Kingdom is a special responsibility of the Board of Trade ; the financial position of the United

Kingdom in relation to foreign countries is a special responsibility of the Treasury. Ultimate responsibility for any matter of major policy is that of His Majesty's Ministers collectively. This is particularly relevant in questions which involve two or more Departments of Government.

The formation of commercial policy towards foreign countries and the conduct of trade negotiations with other Governments are thus primarily the responsibility of the Board of Trade (Commercial Relations and Treaties Department). In addition to sections dealing with general matters, this Department has a number of officers who devote their time to particular countries or groups of countries. They keep in close touch with the relevant geographical and economic departments of the Foreign Office in order to ensure that commercial policy is in line with general foreign policy and also with the Treasury, who have an Overseas Finance Department, which, like the Commercial Relations and Treaties Department, contains geographical sections with respect to financial questions.

The Foreign Office contains both geographical and general economic departments which are organised to handle economic questions, according to whether they are susceptible of being dealt with on a purely geographical basis or are of a more general character. The Foreign Office departments concerned always consult with the Commercial Relations and Treaties Department of the Board of Trade on matters of commercial concern, and the Overseas Finance Department of the Treasury where financial questions are involved.

There are also a number of other Departments (for instance, Food, Civil Aviation, and Fuel and Power) which are associated in their respective spheres with the three Departments principally concerned in the formation of economic policy towards foreign countries.

Thus, there exists, for each country or group of countries a team of officers in the Foreign Office, Board of Trade and Treasury (and also in other Departments as necessary) who are expert in the general, commercial and financial aspects respectively of our relations with foreign countries. The members of this team work closely together and are in constant touch with each other by correspondence, telephone and meetings. These three Departments thus all play their part in framing policy and make their contribution with respect to their particular sphere of operation.

Mention must also be made of the work of the Export Promotion Department of the Board of Trade. This has taken the place of the Department of Overseas Trade, which was jointly responsible to the Foreign Office and the Board of Trade. As its name indicates, the emphasis of the work of this Department is primarily on the urgent need to expand U. K. exports. Consequently the Export Promotion Department is mainly in contact with the individual traders at home or overseas who are engaged in the actual work of export, rather than with other Government Departments. But in addition to these activities it is also responsible for providing the policy-making Departments with the economic, commercial and in many cases financial data on which policy decisions can be based.

Economic work in foreign countries is conducted through the Commercial Secretariats of United Kingdom Missions abroad, who are responsible to the Foreign Office and are members of the Foreign Service. These officers are the chief sources of intelligence on economic developments in foreign countries and they serve for this purpose the Export Promoting Department of the Board

of Trade. At the same time these Commercial Secretariats are responsible for handling trade questions as defined in paragraph 2 with the Governments to which they are accredited, under instructions from the Commercial Relations and Treaties Department of the Board of Trade.

The allocation of responsibility for commercial relations with Canada, Australia, New Zealand, South Africa and Eire follows a similar pattern with the difference that the Dominions Office and not the Foreign Office is generally responsible for relations with those countries. The Trade Commissioners stationed in the British Commonwealth, unlike the commercial secretariats in Foreign countries, are primarily responsible to the Board of Trade. But in the countries mentioned the Senior Trade Commissioner is in each case also the Economic Adviser to the United Kingdom High Commissioner (or Representative) and thus keeps in touch through the latter with the Dominions Office.

How far is administrative practice a legitimate criterion in these matters ? In *Croft v. Dunphy* [1933] A. C. 156, 165, the Privy Council observed : " When a power is conferred to legislate on a particular topic, it is important, in determining the scope of the power, to have regard to what is ordinarily treated as embraced within that topic in legislative practice and particularly in the legislative practice of the State which has conferred the power ". By analogy, a power to " deal with " a certain topic must be similarly construed in the light of administrative practice. And since the power in the present case may be said to be conferred by the Cabinet Delegation's statement, it is the administrative practice of the United Kingdom that is particularly relevant.

Can the Union utilise the treaty making power given to it by the category " foreign affairs " for the purpose, say, of enforcing a forty hour week in selected Indian industries, " conditions of labour " being assumed to be a Provincial subject ? Dr. Wynes answers a similar question under the Australian Constitution in the affirmative [" Legislative and Executive Powers in Australia ", 1936, *p.* 209] ; but he wrote before the Privy Council decision in *Attorney General for Canada v. Attorney General for Ontario and Others* (1937 A.C. *p.* 326). In this case, the Privy Council ruled as invalid certain Acts of the Canadian Parliament regulating conditions of labour in various ways, as the legislation related to a Provincial subject, although it was sought to be justified on the ground that it was required to give effect to certain International Conventions which had been ratified by the Dominion of Canada. " The Dominion cannot, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the Constitution which gave it birth. * * * It must not be thought that the result of this decision is that Canada is incompetent to legislate in performance of treaty obligations. In totality of legislative powers, Dominion and Provincial together, she is fully equipped. But the legislative powers remain distributed and if, in the exercise of her new functions derived from her new international status, Canada incurs obligations, they must, so far as legislation be concerned, when they deal with Provincial classes of subjects, be dealt with by co-operation between the Dominion and the Provinces." It is interesting to note that the existing provision on this point in the Government of India Act, 1935, follows a similar view : see section 106 (1).—" The Federal Legislature shall not, by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries, have power to make any law for any Province except with the previous consent of the Governor ".

The American case, *The United States of America v. Curtiss-Wright Export Corporation*, reported in 299 U.S. 304—333, contains a useful discussion of the " foreign relations " power in the U.S.A. The point of interest is that in certain circumstances a penal tariff or even a total prohibition of the import of goods may come within its ambit. For example, if a foreign country discriminates against the nationals or the goods of the Indian Union, the Union may, in the discharge of its functions in relation to foreign affairs, retaliate either by prescribing a penal duty on the import of the goods of that country or by prohibiting their import altogether. [See foot note at *p.* 324 of the above report.] In certain circumstances, therefore, the " foreign affairs " power may include powers in relation to the import of goods from a foreign country, although normally the powers may be distinct.

It may be useful to note the classes of external matters whether described as foreign or external affairs or not, which are dealt with by the Centre in various Constitutions :—

*The United States of America*

*Article I—*

*Section* 8.—The Congress shall have power *** to regulate commerce with foreign nations ***; to establish an uniform rule of naturalization; ***to regulate the value of foreign coin*** ; to define and punish piracies and felonies committed on the high seas ; and offences against the law of nations ;

to declare war * * *; and

to make all laws, which shall be necessary and proper for carrying into execution the foregoing powers.

*Section* 9.—The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year 1808, but a tax or duty may be imposed on such importation not exceeding 10 dollars for each person.

*Canada*

The Canadian Parliament has power to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects assigned exclusively to the Legislatures of the Provinces. No aspect of foreign affairs is assigned to the Provincial Legislatures. On the other hand, for greater certainty and without prejudice to the generality of the residuary powers of the Canadian Parliament, the following powers have been expressly conferred exclusively on the Parliament of Canada:-

The regulation of trade and commerce ; and naturalization and aliens.

(*See* section 91, entries 2 and 25.)

*Australia*

The Commonwealth Parliament has power to make laws with respect to—

Trade and commerce with other countries, naturalization and aliens, foreign corporations, immigration and emigration, external affairs, the relations of the Commonwealth with the islands of the Pacific, and matters incidental to the execution of any of these powers. [*See* section 51, items (*i*), (*xix*), (*xx*), (*xxvii*), (*xxix*), (*xxx*) and (*xxxix*).]

*South Africa*

The Union Parliament has full power to make laws for the peace, order and good government of the Union ; in other words, it has plenary powers in respect of all subjects. (*See* section 59 of the Union Constitution.)

*India*

Under the Act of 1935, the Federal Legislative List comprises—

Preventive detention for reasons of State connected with external affairs;

External affairs ; the implementing of treaties and agreements with other countries ; extradition ;

Admission into, and emigration and expulsion from, India ; pilgrimages to places beyond India ;

Import and export across customs frontiers ;

Admiralty jurisdiction; and

Naturalization.

(*See* entries 1, 3, 17, 19, 21, and 49 in List I of the Seventh Schedule to the Act.)

*Austria-Hungary*

Under the Compact of 1867, the following subjects were declared to be common to the two halves of the dual monarchy :—

Foreign affairs, including diplomatic and commercial agencies *vis-a-vis* foreign countries ; but the ratification of treaties, so far as it was constitutionally required, was reserved to the two separate parliaments.

Among subjects which were not common, but were to be dealt with according to principles agreed upon from time to time, were :—

Commercial Affairs, and especially the tariff ; indirect taxes affecting industrial production ; money and coinage ; and the military system.

These subjects, most of which, in other federations, fall within the province of the Central Legislature, were regulated in the dual monarchy by concurrent statutes of the two parliaments and thus nearly everything in the nature of positive law had to be enacted separately in Austria and Hungary.

(*See* Lowell's " Governments and Parties in Continental Europe ", 1917, Vol. II, *pp.* 162—179.)

*Switzerland*

*Article* 8.—

The Confederation alone has the right to declare war and to make peace as well as to conclude alliances and treaties with foreign States, especially customs arrangements and commercial treaties.

*Article* 9.—

In exceptional cases, the cantons retain the right to conclude treaties with foreign States on matters concerning public economy and neighbourhood and police relations ; however, such treaties shall contain nothing contrary to the Confederation and to the rights of other cantons.†

*Article* 10.—

The official relations between the cantons and foreign governments or their representatives shall take place through the medium of the Federal Council.

However, the cantons may correspond directly with the subordinate authorities and agents of a foreign State when dealing with the matters mentioned in the preceding Article.

*Article* 69 (*a*).—

* * * * *

The Confederation is responsible for the control of imports on the national frontier.

†For instance, if the canton of Ticino concludes a treaty with Italy for furnishing salt this does not affect the Confederation. *See* " The Swiss Confederation " by Adams and Cunningham, 1889, *p.* 30, footnote.

*Article* 69 (*b*).—

The Confederation has the right to legislate on foreigners entering and leaving the country and on their sojourn and establishment within it.

The cantons shall, in accordance with federal law, decide on the sojourn and establishment of foreigners : However, the Confederation has the right to decide in final appeal :

(*a*) on cantonal authorization of prolonged sojourn and establishment, as well as on favours granted in this connection,

(*b*) on the violation of treaties of establishment,

(*c*) on cantonal expulsions when they have repercussions on the territory of the Confederation,

(*d*) on the refusal of the right of asylum.

*Article* 70 —

The Confederation has the right to expel from its territory the foreigners who jeopardize the interior or exterior security of Switzerland.

*U. S. S. R.*

*Article* 14 —

The jurisdiction of the Union of Soviet Socialist Republics, as represented by its highest organs of state authority and organs of government, extends to—

(*a*) representation of the Union in international relations, conclusion and ratification of treaties with other States ; and the establishment of the general character of the relations between the Union Republic and foreign States.

(*b*) questions of war and peace ;

* * * *

(*h*) foreign trade on the basis of state monopoly ;

* * *

(*v*) laws on the rights of foreigners.

## AMBIT OF DEFENCE POWER

1. See the Report of the Joint Committee on Indian Constitutional Reforms, Vol I. para 238 : " Apart from a considerable revision of the language of the first five entries of List I, as they appear in the White Paper, which collectively define the ambit of the reserved subject of defence, etc." From this it follows that in the opinion of the Joint Committee the first five entries of List I of the White Paper collectively define the ambit of " defence." The White Paper in question is printed as Appendix VI to the Report and it will be seen that the first five entries of List I of that Paper are equivalent to entries 1 and 2 of List I in the Seventh Schedule to the Act of 1935 *plus* " the common defence of India in time of an emergency declared by the Governor-General " *plus* " the employment of the armed forces of His Majesty for the defence of the Provinces against internal disturbance and for the execution and maintenance of the laws of the Federation and the Provinces ". The defence of India in a declared emergency is now provided for in section 102 of the Act of 1935.

2. See the Australian Bread Case, 21 C. L. R. 433 (*Farey v. Burvett*), in which the validity of a war time Regulation fixing the maximum price of bread was impugned. The Regulation was held valid by a majority of 5 to 2. Isaacs J. held that " defence " included *everything in relation to national defence that the Commonwealth Parliament might deem advisable to enact* (*p.* 455). Griffith C J —" The word ' defence ' of itself includes all acts of such a kind as may be done in the United Kingdom either under the authority of Parliament or under the Royal Prerogative for the purpose of the defence of the realm *** *It includes preparation for war in time of peace* and any such action in time of war as may conduce to the successful prosecution of the war and defeat of the enemy." (*Ibid. p.* 440).

3. Note that in Australia the entry in section 51 (*vi*) of the Commonwealth Constitution relates to the " naval and military defence " of the Commonwealth. Hence the dissentient judgment in the above case that price-fixing was outside Commonwealth powers.

4. See Dr. Wynes's " Legislative and Executive Powers in Australia ", *pp*. 173—190, where the author discusses a large number of reported cases bearing on the subject of defence.

5. It has been held in Australia—

(*a*) that it is not competent for the Commonwealth Parliament under its defence power to set up manufacturing or engineering businesses for general commercial purposes in peace-time merely, because such activities may conduce to the works of a department of the defence administration [*Commonwealth v. Australian Shipping Board* (1926) 39 C. L. R. 1];

(*b*) but that, it is competent for a Commonwealth Clothing Factory created essentially for defence purposes to engage incidentally in commercial transactions [*Attorney General for Victoria v. The Commonwealth* (1934-5) 52 C. L. R. 533].

The latter decision has distinguished the former on the ground that the Australian Shipping Board was not an organ of the Executive Government itself. The Commonwealth Clothing Factory, on the other hand, had been established by the Commonwealth Government itself in 1911 for the manufacture of naval and military equipment and uniforms. During the War of 1914—1918, there was a large increase in the output of the factory ; at the end of the war, the demand for naval and military clothing was very greatly reduced ; but, rather than reduce staff or plant, the factory accepted orders from other Government departments and from public bodies. The legality of this course was challenged at the instance of the Victorian Chamber of Manufactures. The high Court held in effect that it was clearly " necessary for the efficient defence of the Commonwealth to maintain intact the trained complement of the factory so as to be prepared to meet the demands which would inevitably be made upon the factory in the event of war ". " It is obvious that the maintenance of a factory to make naval and military equipment is within the field of legislative power. The method of its internal organisation in time of peace is largely a matter for determination by those to whom is entrusted the sole responsibility for the conduct of naval and military defence. In particular, the retention of all members of a specially trained and specially efficient staff might well be considered necessary and it might well be thought that the policy involved in such retention could not be effectively carried out unless that staff was fully engaged. Consequently, the sales of clothing to bodies outside the regular naval and military forces are not to be regarded as the main or essential purpose of this part of the business, but as incidents in the maintenance for war purposes of an essential part of the munitions branch of the defence arm. In such a matter, much must be left to the discretion of the Governor-General and the responsible Ministers." (*p*. 558).

6. In the U. S. A., the " war power " of the Congress extends to—

> the raising and supporting of armies, the provision and maintenance of a navy, the governance of the land and naval forces, and the organizing and calling forth of the militia ;

but the right of the people to keep and bear arms is not to be infringed. In addition, Congress has of course the power to make all laws necessary and proper for carrying into execution the foregoing powers. (See Article I, section 8, of the Constitution of the U. S. A.).

Writing in 1942, Dodd, in "Cases on Constitutional Law" (Shorter Selection), says :—

> "The participation of the United States in the World War (1917—1919) was the occasion for a more extensive exercise of federal war powers than ever before in our history, both as regards strictly military matters and the incidental civil control of the energy and resources of the nation. No act of Congress was held invalid by the federal Supreme Court, as outside the war power, and only part of one—the Lever Act—for exercising a war power in a forbidden way." (*p.* 338).

For the almost limitless activities which may be undertaken in exercise of the war power, see *pp* 59 to 184 of the United States Government Manual, 1945, First Edition, describing the "Council of National Defense" (formed under an Act of Congress in 1916, for the "co-ordination of industries and resources for the national security and welfare" and "the creation of relations which render possible in time of need the immediate concentration and utilization of the resources of the Nation") and the various emergency war agencies set up during the last two world wars.

7. The following accounts—

(*a*) of the Austro. Hungarian defence system, and

(*b*) of the Swiss defence system,

taken respectively from Lowell's "Governments and Parties in Continental Europe" (*pp.* 171-172) and "Governments of Continental Europe", 1940, edited by James T. Shotwell (*pp.* 1028—1030), may be of interest: -

THE AUSTRO-HUNGARIAN DEFENCE SYSTEM

"The next department of the joint administration is that of war, and here again is found the strange mixture of federal union and international alliance that is characteristic of the relations of Austria and Hungary. The regular army and the navy are institutions of the joint monarchy, although they are governed by separate standing laws of the two states, which are, of course, substantially identical. These laws determine, among other things, the number of the troops, and provide that the men shall be furnished by the two countries in proportion to population; but the contingent of recruits required from each country is voted annually by its own parliament. It is useless to inquire what would happen if either half of the Empire should refuse to raise its quota of troops, for there is no possible means of compulsion, and in this, as in most other cases, the smooth working of the joint government depends ultimately on a constant harmony between the cabinets of Vienna and Buda-Pesth. After the recruits are enlisted they are under the control and in the pay of the joint administration. The Emperor, as commander-in-chief, appoints the officers, and regulates the organisation of the army. The minister of war, curiously enough, is not required to countersign acts of this nature*, but he is responsible for all other matters, such as the commissariat, equipment, and military schools.

Besides the regular army, which belongs to the joint government, there are military bodies, called in Austria the *Landwehr* and in Hungary the *Honveds*, which are special institutions of the separate halves of the monarchy. These troops are composed of the recruits that are not needed for the contingents to the regular army, and of the men who have already served their time in it. They form a sort of reserve, but cannot be ordered to march out of their own

*Law of Dec. 21, 1867, sec. 5.

state without the permission of its parliament; except that in case of absolute necessity, when the parliament is not in session, the permission may be given by the cabinet of the country to which they belong. After such a permission has been granted, however, they are subject to the orders of the general commanding the regular army. The Landwehr and Honveds are organized under independent laws, which happen to be very much alike but are not necessarily so, and their ordinary expenses are borne entirely by the country to which they belong, only the increase of cost arising from their actual use in war being defrayed out of the joint treasury."

THE SWISS DEFENCE SYSTEM

' National Defense.

*Unusual Features of the Army.*—For the defense of their neutrality the Swiss rely not merely upon the pledges of other States but also upon their own army and auxiliary air service. The Swiss army differs quite remarkably from the prevailing Continental military systems. To be sure, like all her neighbours, Switzerland has adopted universal and compulsory military service. Except for those exempted for reasons of physical or mental incapacity, who, incidentally, are required to pay a military exemption tax, every Swiss citizen must begin his initial period of army service during his nineteenth year. This initial peirod, however, is not the two or even one year interval normally required of other Continental military recruits. The Swiss infantry recruit is called to the colors for a period of approximately three months, during which he is thoroughly grounded in military essentials. At the end of this period he is considered a fullfledged member of the army's first-line troops, known as the *Auszug* or *Elite*, and resumes his civilian activities. Recruits in other branches of the service have similar training periods, ranging from 60 days for the medical and supply corps to 102 days for the cavalry. During the next 12 years the infantry recruit is called to the colors annually for 13-day periods to repeat the courses of instruction he received as a recruit and to supplement that instruction. From the end of his thirty-second year until his forty-first, the Swiss soldier is enrolled in the *Landwehr* or first reserve and from his forty-first year until his forty-eigth, in the *Landsturn* or second reserve. During these 16 years the time actually spent with the colors in periods of peace is about two weeks. Altogether, therefore, the formal training of the Swiss soldier throughout his active affiliation with the army rarely exceeds seven or eight months. It must be added that both before and during his military career the Swiss infantryman's formal training is usually supplemented by practice in drill and marksmanship in the various volunteer rifle clubs which dot the land and receive active support from the public authorities. Recently annual practice in musketry under the jurisdiction of a rifle club has been made compulsory for all first-line and *Landwehr* troops.

Still another unusual feature of the Swiss military system is the absence of a permanent professional military staff. No person can be appointed to the rank of commander-in-chief except in time of national emergency when the Federal Assembly has decreed general mobilization; the appointment, moreover, lapses as soon as the emergency has passed. A commander-in-chief has been appointed on four different occasions since 1848. The most recent appointment is that of Colonel Henri Guisan, who took charge of the forces which the Confederation mobilized at the outbreak of the European War in September, 1939. The only military officials in the permanent service of the federal government are those engaged in staff work in the Military department of the Federal Council and those officers and non-commissioned officers who

instruct army recruits. Of these there are at present about 300. The regular commissioned and non-commissioned officers of the army are recruited from the ranks and, like the private soldiers, are called upon only intermittently to serve with the colors after their initial period of training and study; at other times they are engaged in ordinary civilian pursuits.

*Dual Political Control.*—A third distinctive feature of the Swiss army system is the dual character of the political authority which has jurisdiction over it. Although the current of constitutional reform since 1874 has run strongly in the direction of centralizing military jurisdiction in the government of the Confederation, the cantonal governments still exercise many military prerogatives. Within their respective territories they enforce most of the federal military regulations, keep the military registers, call the troops to the colors, and provide them with their personal equipment. They also form the principal infantry units and appoint their non-commissioned and commissioned officers, the latter up to the rank of captain. Military powers are exercised by the cantonal authorities under the supervision and with the approval of the federal Military department; and for at least a portion of the expenditure they incur, the cantons are reimbursed by the federal government.

*New Defence Measures.*—The Swiss military system provides an organized and disciplined force of approximately 425,000 first and second-line troops subject to mobilization during periods of national emergency. It is a system well adapted to the nation's democratic and federalistic political institutions; and despite the strictures of certain Swiss politicians, there is little evidence that the system inspires the militaristic influence commonly associated with professional armies. Whether this system can provide Switzerland with an adequate defense organization at a time like the present is another question. With neighbouring belligerent great powers but poorly concealing irredentist and imperial ambitions which could quite logically include Switzerland, and with offensive military weapons developed to such a point that not even Switzerland's peculiar topography any longer affords a serious obstacle to invasion, this question has become a very grave one. The Swiss themselves appear to be pondering it at length and to have concluded that their defense needs strengthening. At any rate the Federal Council, with the concurrence of a popular majority in a referendum held in 1936, has taken steps to increase the period of active training with the army, to supplement military aviation and artillery service, to perfect anti-aircraft defense and defense against gas attacks, and to strengthen every variety of border fortification. Moreover as long as the period of national emergency, decreed at the end of August, 1939, continues, the Swiss army, at least partially mobilized, will maintain a continuous watch on the nation's frontiers."

## AMBIT OF "COMMUNICATIONS"

1. "Communications" is a wide term and, interpreted in the widest possible sense, would include even village roads. Some such qualification as "inter-unit" may have to be imported, if "communications" not extending beyond the limits of a Province or State and not connected with any inter-unit line of communication are not to be dealt with by the Union.

2. As to the detailed items which "communications" may include, see, in particular, entry 7 of List I and entry 18 List II in the Seventh Schedule to the Government of India Act, 1935. It is clear from the former that posts and telegraphs, including telephones, wireless and broadcasting would be included under the existing Constitution as "forms of communication". The

latter entry runs : " Communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I, etc." The "means of communication " included in List I are mainly railways, seaways, and airways. Seaports, being related to sea communications in much the same way as railway stations are related to railways, would also probably be included in the term " communications " and similarly lighthouses and other safety devices for shipping and aircraft ; so too, the carriage of passengers and goods by rail or sea or air. Port quarantine can hardly be dissociated from sea ports or air ports. Practically, therefore, entries 7, 18, 20, 21, 22, 24, 25 and 26 of List I in the Seventh Schedule to the Act of 1935 would be largely included in the term "communications", even if we limit it to inter-unit communications.

3. In Canada, besides the regulation of trade and commerce and the postal service, the following enumerated subjects fall within the authority of the Canadian Parliament :—

> Navigation and shipping ; quarantine ; lighthouses ; ferries between a Province and any British or foreign country or between two Provinces ; lines of steam or other ships, railways, canals, tele graphs, and other works and undertakings connecting a Province with any other Province or Provinces or extending beyond the limits of a Province; lines of steamships between a Province and any Biritish or foreign country ; and such works as, although situate within a Province, are declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more Provinces. (*See* section 91, entries 9, 10, 11, and 13 and section 92, entry 10.)

4. In Australia, the Commonwealth Parliament has power to make laws with respect to—

(1) trade and commerce with other countries and among the States;

(2) postal, telegraphic, telephonic and other like services ;

(3) lighthouses ;

(4) qurantine ;

(5) the control of railways with respect to transport for the naval and military purposes of the Commonwealth ;

(6) the acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State ; and

(7) railway construction and extension in any State with the consent of that State.

[*See* section 51, items (*i*), (*v*), (*vii*),(*ix*), (*xxxii*), (*xxxiii*) and (*xxxiv*) of the Australian Constitution.]

It has also been made clear in a subsequent provision (section 98 of the Constitution) that the power of the Parliament to make laws with respect to trade and commerce extends to navigation and shipping and to railways owned by any State.

Railways in Australia occupy, and occupied in 1900, a special position in that they were and are owned and carried on by the various State Governments. Hence the power of the Commonwealth parliament in respect of railways is somewhat limited. [*See* Dr. Wynes's "Legislative and Executive Powers in Australia," p. 160.]

5. In the U.S.A.' Congress has been granted express power to establish post offices and post roads. See Article I, section 8, U.S.A. Constitution. In other respects, federal power appears to have developed as incident to "interstate commerce". It has been held that "commerce" includes the telegraph, the telephone, the radio and communication by correspondence through the mails, besides railways and navigation (*See* Dodd's "Cases on Constitutional Law", Shorter Selection, 1942, pp. 356 and 391.)

6. In Switzerland, the Confederation is responsible for legislation concerning navigation as also legislation on the construction and working of rail roads and on aerial navigation. The postal and telegraph services belong to the confederation. The Confederation can order at its expense or encourage by means of subsidies public works which interest the whole or any considerable part of Switzerland. The Confederation also exercises supreme control over the roads and bridges in whose maintenance it is interested and can decree provisions concerning motor traffic. (*See* Articles 23, 24*b*, 26, 36, 37, 37*a*, and 37*b*).

7. In the U.S.S.R., the powers of the Union extend to the "administration of transport and means of communication". [*See* Article 14 (*m*) of the constitution of the U.S.S.R. ]; and there are separate departments ("People's Commissarias") for Railways, Communications, and Water Transport.

## UNION SUBJECTS (II).

Paragraph 15(1) of the Cabinet Delegation's statement of May 16, 1946, recommends that the Union of India should deal with Foreign Affairs, Defence and Communications and should have the powers necessary to raise the finances required for these subjects. Whether these powers should be powers of direct taxation in right of the Union or merely powers to levy contributions from the Provinces is a question of great importance on which the statement is silent. One view is that the finances should be raised only by contribution and not by taxation. The other is that the Union should have the power of taxation. The experience of other countries may be useful in this connection.

### U.S.A.

Before the present Constitution of the U.S.A. was framed by the Philadelphia Convention, the States had been linked together in a loose confederacy by certain Articles of Confederation. Under these Articles, they had only one central organ, the Congress of States, in which all the States were on an equal footing. The purpose of the confederacy was to provide for the common defence of the States, the security of their liberties, and their general welfare. Article VIII provided that "All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several States, in proportion to the value of all land within each State, granted to or surveyed for any person * * * * The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled." In other words, Congress was to determine the amount of money needed and to apportion to each State its share. "Congress did so, but the States honoured the requisitions exactly to the extent that each saw fit, and Congress had no power and no right to enforce payment. What was the result? If one may judge by the complaints that were entered, it was more profitable to disobey than to obey. In the dire straits for funds to which it found itself reduced, Congress took advantage of the lack of information on land values to juggle with the estimates, so as to demand more of those States that had previously shown a willingness to pay. The financial situation was so serious that early in 1781 before the articles had been finally ratified, Congress had already proposed to the States an amendment authorizing the levy of a five per cent. duty upon imports and upon goods condemned in prize cases. The amendment was agreed to by twelve States. But another weakness of the Confederation was here revealed, in that the articles could only be amended with the consent of all of the thirteen States. The refusal of Rhode Island was sufficient to block a measure that was approved of by the twelve others. In 1783 Congress made another attempt to obtain a revenue by requesting authority for twenty-five years that the States should contribute in proportion $1,500,000 annually, the basis of apportionment being changed from land values to numbers of population, in which three-fifths of the slaves should be counted. In three years only nine of the States had given their consent and some of those had consented in such a way as would have hampered the effectiveness of the plan. It was, however, the only relief in sight and in 1786

Congress made a special appeal to the remaining States to act. Before the end of the year, all of the States had responded with the exception of New York. Again the inaction of a single State effectually blocked the will of all the others." ("The Framing of the Constitution" by Farrand, *pp.* 4-5.)

It was to rectify these and other defects that the Philadelphia Convention was called. Under the Constitution framed by that Convention—which is substantially the present Constitution of the U.S.A.—Congress has been given "power to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defence and general welfare of the United States"; "to borrow money on the credit of the United States"; "to coin money, regulate the value thereof and of foreign coin". Thus, the right of direct taxation was substituted for the right of levying contributions.

### Canada

Under the British North America Act (section 91, item 2), the Centre has the power to raise money by any mode or system of taxation; to borrow money on the public credit; to regulate currency, coinage and legal tender as also the issue of paper money. The Provinces are limited to direct taxation within their own borders in order to the raising of revenue for provincial purposes and the borrowing of money on their own credit.

### Australia

The Commonwealth, that is to say, the Centre, and the States have concurrent powers of taxation except that the imposition of duties of custom, and excise belongs exclusively to the Commonwealth. Currency, coinage legal tender and the issue of paper money are also Commonwealth subjects States being prohibited from coining money or making anything but gold and silver coin legal tender. [See sections 51, 52, 69 and 115 of the Commonwealth of Australia Constitution Act, 1900.] But even where the powers are concurrent, section 109 of the Constitution Act provides that when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid.

### South Africa

In South Africa, the Union (Centre) has plenary powers of taxation, because under section 59 of the Constitution Act, the Union Parliament has full powers to make laws for the peace, order and good government of the Union. The power of the Provinces is severely limited:

"Subject to the provisions of this Act and the assent of the Governor-General-in Council as hereinafter provided, the Provincial Council may make Ordinances in relation to matters coming within the following classes of subjects, that is to say,

(*i*) direct taxation within the Province in order to raise a revenue for provincial purposes;

(*ii*) the borrowing of money on the sole credit of the Province with the consent of the Governor-General-in-Council and in accordance with the regulations to be framed by Parliament (of the Union)

* * *

(See section 85 of the Constitution Act.) But of course the Union of South Africa is not a Federation and the Provinces are almost completely subordinate to the Centre.

SWITZERLAND

According to Article 42 of the Constitution, the expenses of the Confederation have to be met—

(*a*) from the income of federal property;
(*b*) from the proceeds of the federal customs;
(*c*) from the proceeds of posts and telegraphs;
(*d*) from the proceeds of the powder monopoly;
(*e*) from half of the gross receipts from the tax on military exemptions levied by the cantons;
(*f*) from the contributions of the cantons which shall be determined by federal legislation with due regard to their wealth and resources; and
(*g*) from stamp duties.

"As stated in the constitution, this is a decidedly imposing array of resources, but upon analysis it shrinks considerably. Contributions by the cantons recall the old régime when the small sums necessary for the support of the diet were thus procured. An ideal system for the apportionment of such contributions under the present federal government was worked out in 1875, but the central authorities have never asked for assistance on this basis. Posts, telegraphs, and telephones yield moderate returns. The purpose of the powder monopoly established in 1848 was not to secure revenue but to assure the government adequate supplies for all purposes of this military necessity. Blasting powder is not included. However, the monopoly has been made to produce a small net profit annually. Receipts from the military exemption tax law are not large. They amounted to a little over a million francs a year in the beginning, increasing to 2,143,062 francs in 1910. As to the income from federal property, it must be remembered that the new central government possessed very little property at the time of its creation in 1848. All in all, therefore, in spite of the number of different sources of revenue enumerated in the constitution, the real burden of providing for the expenditures of the federation devolved very largely upon one of them—namely, the federal customs." ("Government and Politics of Switzerland" by Brooks, *pp.* 180-181.)

The history of currency and coinage in Switzerland is interesting. By the Constitution of 1874, the federation was given the power to regulate by law the issue and redemption of bank notes, but it was specifically prohibited from creating a monopoly for the issue of such notes. This left the numerous banks chartered by the cantons actually in control of the field. In 1880, advocates of a national bank endeavoured to amend the constitution by initiative, but were unsuccessful. Eleven years later the movement succeeded. In its present form, Article 39 of the Constitution confers the right to issue bank notes and other similar paper money exclusively upon the federation.

A national bank with headquarters in Bern and Zürich was opened in 1907. "As the agent of the government in its difficult tasks of war finance, particularly in floating the mobilisation loans, the new national bank has proved itself one of the strongest foundation stones of the whole federal structure." (Brook, *op., cit.*, p. 194.)

Under Article 38, the federation alone has the right to coin money

"In Switzerland the original division of taxing powers in the Constitution of 1848 allotted customs duties to the general government [that is, the Federal Government and practically no other taxing power. The remaining

powers of indirect taxation and the whole power of direct taxation seems to have been left to the cantons. This distribution came to be modified when Switzerland felt the effect of an event which probably affected federal public finance more than any other single factor—the first world war. Switzerland was not a belligerent but she felt the effects of the war none the less. Her army was completely or partially mobilized for over fifty months ; her customs revenue fell sharply with the decline of international trade ; and the revenue from the federal railways declined. To meet these increases in expenditure and decreases in revenue constitutional amendments were passed to authorize the general government to enter the field of direct taxation. Taxation of incomes, property and profits was imposed by amendments of 1915 and 1919 and a tax on securities, insurance premiums and the like, by an amendment of 1917. In all three cases, as I have mentioned earlier, an arrangement was made that the cantons should obtain some share in the proceeds of the tax. In 1925 a tax on tobacco was authorized by constitutional amendment. In 1938, largely to meet increased defence expenditure, an amendment of the Constitution authorized taxes on war profits, income and capital, a tax on beer, and repealed the arrangement of 1917 by which the cantons shared in the yield of the stamp taxes." (K. C. Wheare : "Federal Government", *p.* 108).

### Austria-Hungary

(Between 1867 and World War I)

As already mentioned, during this period Austria and Hungary were separate States with a common monarch and a common administration in respect of foreign affairs, defence and finance. Except for a few insignificant matters, such as the lease of State property, the sale of old material and the profits of the powder monopoly, the only direct source of revenue belonging to the joint government was the customs tariff, which rested upon a treaty made between the two countries for ten years at a time in the form of identical Acts of the two Parliaments. Side by side with the budget of each State, there was a common budget which comprised the expenditure necessary for the common affairs. The revenues of the joint budget consisted mainly of the net proceeds of the customs and the quota or the proportional contributions of the two States. This quota was fixed for a period of ten years and generally coincided with the duration of the customs treaty. Until 1897, Austria contributed 70 per cent. and Hungary 30 per cent. of the joint expenditure remaining after deduction of the yield from customs and other common revenues. Subsequently, Hungary's quota was slightly increased and in 1907, it was a little over 36 per cent.

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### Sir Basil Blackett's verdict on Provincial Contributions in India under the Meston Award.

"Ever since the reforms were inaugurated, the provincial contributions have been a millstone round the neck both of the Central Government and of the Provincial Governments, poisoning their mutual relations and hampering their every action. Their quality, even more than their amount, has strained the resources of the giver and the patience of the recipient. They have brought curses, not blessings, both to him who has given and to him who has taken." [Budget Statement (1927-8).]

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# DEMOCRATIC EXECUTIVES

## INTRODUCTION

This pamphlet consists of notes on the type, nature and functions of the executives in ten democratic States : the United Kingdom, Canada, Australia South Africa, Ireland, U.S.A., Switzerland, U.S.S.R., Sweden and Austria-Hungary before its break-up at the end of the first World War.

For each of these countries, the composition of the executive, the manner of its formation, its relation to the head of the State and its relation to the Legislature are given.

It will be seen that the executives in six of the ten States are of the British responsible type. Their chief characteristics are (1) that they are composed of leaders of a party or a coalition of parties ; (2) the dominance of the Prime Minister ; (3) dependence on the majority of the Legislature, and (4) collective responsibility. In spite of different constitutional provisions, the head of the State in these cases acts upon the advice of the executive except when it has lost the support of the Legislature, when he has to replace it by another which has that support. Even in such cases, he normally takes the advice of the outgoing ministry.

The constitution of the executive in the U.S.A. is entirely different in all respects except that the President dominates over his colleagues even more than the Prime Minister. There is no collective responsibility and neither the President nor the other members of the executive can be removed from office by any adverse vote of the Legislature.

The executive in Switzerland is midway between the two. It is elected by the Legislature but holds office for a fixed period. It sits in the Parliament but is not responsible to it. There is no person who dominates it like the Prime Minister of Britain or the President of the U.S.A. There is no strict collective responsibility but the executive normally acts as a team.

In the U.S.S.R., the executive is elected by the Supreme Soviet and is responsible to it and, when it is not in session, to the Presidium. Here collective responsibility seems to be enforced not so much by the constitution as by the dominating influence of the Communist Party.

A description of the executive of Austria-Hungary under the Compact of 1867 has been added, because it was a curious instance of an executive without a Legislature.

## CHAPTER I

## THE UNITED KINGDOM

The conduct of general executive business as well as the superintendence and control of the executive branches of Government and of the various departments of public administration is vested in the Cabinet. It is a body of party politicians selected from among the members of the party or group of parties which has a majority in the House of Commons. It is increasingly recognized, although there have been exceptions to the rule, that the Prime Minister must be in the House of Commons, as the Government owes responsibility to that House alone. The composition of that House determines the nature of the Government. Until recently, the office of Prime Minister was unknown to law and the holder of that office was always holding a ministerial position, normally that of the First Lord of the Treasury. In the Ministers of the Crown Act, 1937, statutory recognition has been given to this office. The choice of the Prime

Minister is made by the King and the nature of the choice necessarily depends upon the state of parties in the House of Commons. The simplest case is that in which a party has a clear majority. The Government must clearly be formed out of that majority and if it has a recognized leader he will be the Prime Minister. The other members of the Government are not elected by the House of Commons. They are chosen by the Prime Minister. This does not mean that the Sovereign may not have considerable influence. Royal influence has even kept individuals out of office altogether. But as against the King the Prime Minister has the final word. He must have a Government which can work together and which can secure the support of the House of Commons. If he says that for this reason he must have the assistance of a certain person, the King must either give way or find another Prime Minister. The King cannot commission another member of the same party ; for that is to interfere with the internal affairs of the party and is contrary to precedent. He must, therefore, find another party which can secure the support of the House of Commons and it must be a strange House that is willing to support two alternative Governments. Though the Prime Minister nominates or technically recommends, it is the King who appoints. Consequently, though a new Prime Minister may recommend that one Minister be superseded by another it is not necessary for him to recommend that the existing Minister be reappointed. That Minister remains in office until his appointment is terminated. Though the right of choice of colleagues rests with the Prime Minister, he has to secure a coherent Cabinet. For this purpose consultations with other members of his Party are usually inevitable. Consequently, the Prime Minister's free choice applies generally only to the less important Cabinet posts and to minor office. But here again he has to consider the views of the heads of departments. The practice is that the Prime Minister makes the appointment, but he consults the Minister under whom the junior Minister will work. The Prime Minister's free choice is further limited by the necessity of allocating offices between the House of Commons and the House of Lords. It is provided by law that not more than six Secretaries of State nor more than seven Under-Secretaries of State shall sit in the House of Commons. But the Chancellor of the Exchequer, the Financial Secretary to the Treasury, Parliamentary Secretary and junior Lords of the Treasury and the Financial Secretary to the War Office are usually in the House of Commons. The Lord Chancellor must be in the House of Lords, whether a peer or not. In practice he is always made a peer. If the head of a department is in the House of Lords, his Under-Secretary or Secretary must be in the House of Commons. The few heads of departments in the House of Lords are supported by the Lord President of the Council, the Lord Privy Seal or the Paymaster-General(if any of these is a peer)and by the Chief Household officers. The responsibility of answering for the various unrepresented departments is divided among the holders of these offices.

The House of Commons is suspicious of minister without portfolio. The institution is less necessary in the British than in most Cabinets. For the Lord Privy Seal has no administrative duties ; the functions of the Lord President of the Council and the Chancellor of the Duchy of Lancaster are light; and the work of the First Commissioner of Works is not heavy. Thus the Prime Minister has at his disposal three or four offices which can be filled by statesmen whose advice in the Cabinet is desired but who are unwilling or unable to undertake heavy administrative work. Ministers without portfolio are, nevertheless, not unknown.

All the members of Government are not members of the Cabinet. In filling the offices, the Prime Minister has to determine who shall be in the Cabinet.

The Lord President of the Council, the Lord Privy Seal, the eight Secretaries of State, the Chancellor of the Exchequer, the Presidents of the Board of Trade and Education, the First Lord of Admiralty and the Ministers of Health, Labour and Agriculture and Fisheries are always in the Cabinet. Twenty is now the minimum. Strictly, it is not necessary to take the King's pleasure as to the promotion of a minister to Cabinet rank. The Cabinet is not a local entity and Cabinet rank is not due to an office. He is invited to attend by a purely informal note from the Prime Minister. For the Cabinet is merely a private meeting of the more important Ministers. It is, however, the rule that Cabinet Ministers should be sworn of the Council so as to apply to them the Privy Councillor's oath. Since this involves an appointment the King's consent must be obtained. Whatever the number of the Cabinet, or of the Ministry as a whole, there is joint and undivided responsibility to Parliament. A Minister can never plead that he was ignorant or unaware of what his colleagues were doing. The first mark of the Cabinet is united and indivisible responsibility. There is political homogeneity which is accompanied by the ascendency of the Prime Minister. A Minister who is not prepared to defend a Cabinet decision must resign. Questions are sometimes left as "open questions," so that any Minister may vote or speak as he pleases. The Sovereign is excluded from the meetings of the Cabinet. When the retiring Prime Minister goes out of office the whole Cabinet is dissolved. The consequence is that all ministerial offices are placed at the Prime Minister's disposal. This is so even if the new Prime Minister is the "old" Prime Minister, that is when the Prime Minister is commissioned to form a new Government. This however does not mean that all offices are immediately vacant. It means only that the King, on the Prime Minister's advice can exercise his legal right to dismiss the holder of any office held at the pleasure of the Crown. All the members of the Cabinet continue to hold their offices for transaction of current business until their successors are appointed.

The Government is responsible to the House of Commons. Responsibility does not mean that every Government act has to be reported to and approved by the House of Commons. The Government needs express Parliamentary approval for its legislative proposals and most of its expenditure. It has to seek approval, too, of most of its proposals for taxation. It is called upon to explain and justify its administrative policy. If the House of Commons clearly shows that it does not propose to support the Government—if, that is, the Government has lost the "confidence of the House"—it must resign or dissolve Parliament, both because of constitutional conventions and because Government without constant parliamentary support is legally impossible. It must not be thought, however, that a single defeat necessarily demands either resignation or dissolution. Such a result follows only where the defeat implies loss of confidence. What the Government will treat as a matter of sufficient importance to demand resignation or dissolution is, primarily, a question for the Government. The opposition can always test the opinion of the House by a vote of no-confidence. Minority Governments are more common than is commonly supposed. They are undoubtedly weaker than majority Governments. But they are not so weak that they cannot govern. And a Government without a majority is not entirely disarmed. It still possesses the weapon of dissolution.

British Governments are in fact expected to govern. If necessary they are expected to act even when they have no legal powers. They can rely on their majorities and on the common-sense of the House to ratify their acts. There is and can be no limitation to retroactive legislation.

An able monarch can have a considerable influence on the policy of the Government. He is in close touch with the Prime Minister and he reads the Cabinet minutes. He may also have outside sources of information. He can criticize governmental proposals and governmental acts. Though he must in the last resort accept a Cabinet decision, he is not bound to accept anything less. He can, therefore, insist on the submission of any question raised by a department and he can raise any question which ought in his opinion to be submitted to the Cabinet. He receives and has a right to receive an account of every Cabinet meeting. There are, however, certain prerogative powers which he exercises on his own responsibility and which may fitly be called personal prerogatives. Exactly what they are is by no means clear, for there are differences of opinion in respect of several of them. There is no controversy that he need not accept advice from a retiring Prime Minister as to the appointment of his successor or that he need not accept advice as to the creation of peers so as to override the opposition of the House of Lords. There is controversy as to whether he can dismiss a Government or dissolve Parliament when advised to do so. It has also been suggested that he could summon Parliament to meet where he pleased.

There has been no precedent for dismissal of Ministers in modern conditions. On the question of dismissal of a Government, the general opinion is that it is not for the King to intervene except by warnings and protests. It is inevitable that a Sovereign who dismisses Ministers or compels them to resign would be regarded as the ally of the opposition and as such be made the subject of attack. The King's function is to see that the Constitution functions in the normal manner. It functions in the normal manner so long as the electors are asked to decide between parties at intervals of reasonable length. He would be justified in refusing to assent to a policy which subverted the democratic basis of the Constitution by unnecessary and indefinite prlongation of the life of Parliament, by gerrymandering of the constituency in the interests of one party or by fundamental modification of the electoral system to the same end. He would not be justified in other circumstances.

The King cannot dissolve Parliament without advice. The dissolution involves the acquiescence of Ministers. It necessitates an Order in Council and the Lord President accepts responsibility for summoning the Council. It necessitates a proclamation and writs of summons under the great seal for which the Lord Chancellor accepts responsibility. Consequently the King cannot secure a dissolution without " advice ". If Ministers refuse to give such advice he can do no more than dismiss them.

There has been no instance during the last 100 years of a refusal of a dissolution by the King when advised by the Cabinet. There has been nevertheless a persistent tradition that he could refuse if the circumstances arose, but this has been maintained only in theory. It can hardly be exercised in practice.

## CHAPTER II

## THE DOMINIONS GENERALLY

1. The Dominions referred to in this Chapter are the Dominion of Canada, the Commonwealth of Australia, and the Union of South Africa. They belong to three different types. Canada is a Federation in which the units have certain enumerated powers exclusively to themselves, while the residuary powers, some of which are also enumerated for greater certainty, are vested exclusively in the Centre. Australia is also a Federation ; but here the Centre has certain enumerated powers exclusively to itself ; certain other powers, also enumerated, belong concurrently to the Centre and the units ; while the

residuary powers are vested exclusively in the units. South Africa is not a Federation at all ; it is a Union. Although there is a Centre with four units, the units have no *exclusive* powers. They have powers in certain specified matters, but subject to the over-riding powers of the Centre. Here we are concerned only with the form of the Central Government in each country. Nevertheless one aspect of the Provincial Administration in South Africa deserves mention. The Provincial executive authority is vested in an Executive Committee consisting of an Administrator appointed by the Governor-General-in-Council and four members *elected by the Provincial Legislature* after each general election.

2. There are certain features common to all the Dominion Constitutions :

(1) The executive authority of the Dominion is vested in the King and exercisable on his behalf by the Governor-General, who in practice is appointed by the King primarily, if not solely, on the advice of the Dominion Ministry.

(2) The Governor-General is advised, or aided and advised, by a Council variously called " the Queen's Privy Council " (in Canada) or " the Federal Executive Council " (in Australia) or simply " the Executive Council " (in South Africa). Although the function of " aid and advice " is legally vested in the whole of the Council, in practice it is exercised by a smaller body, namely, the Cabinet of the day. Members of the Cabinet are, of course, also members of the Council. In addition, *ex*-Ministers and sometimes persons who have never been Ministers at all (for example, the Speakers of the Legislature in Canada) are also members of the Council. Nevertheless, as already stated, it is only the Cabinet of the day that actually exercises the function of " aid and advice ".

(3) A third feature of the Dominion Constitutions, speaking broadly, is that though the written Constitution distinguishes functions to be exercised by the Governor-General-in-Council from those to be exercised by him individually, in practice the distinction has ceased to exist. Thus, in the Canadian Constitution, Section 12 makes a distinction in terms between the powers, authorities and functions exercisable by the Governor-General with the advice and consent of, or in conjunction with, the Council or any members thereof and those exercisable by the Governor-General individually ; and the succeeding sections make it clear that certain functions, such as the summoning of the House of Commons, filling up vacancies in the Senate, appointing Judges of the superior courts in the provinces, assenting to Bills, etc., are to be exercised by the Governor-General individually. In the written Australian Constitution also there are certain functions vested in the Governor-General-in-Council and others vested in the Governor-General alone. So too in the written South African Constitution. In practice, however, these distinctions have disappeared and conventions have grown up whereby the Governor-General almost always acts on advice.

(4) The important point to note is that the Constitution *in fact* is often very different from the Constitution *in theory*. A great Canadian Judge, lecturing on " The Canadian Constitution in Form and in Fact ", warned his audience at the outset that much of that Constitution is unwritten and that much of what is written is or may be misleading.

## CHAPTER III
## CANADA

Section 11 of the British North America Act provides that "there shall be a Council to aid and advise in the Government of Canada, to be styled 'the Queen's Privy Council for Canada'; and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor-General and sworn in as Privy Councillors, and members thereof may be from time to time removed by the Governor-General."

2. In practice, however, the function of "aid and advice" is exercised by a small group of Privy Councillors—the Cabinet. The constitution of the Cabinet is, as in England, based on convention. The main principles are that the Cabinet should be chosen only from the political party which commands a majority in the House of Commons and that only members of Parliament can hold Cabinet offices. There is no statutory or other written prohibition against a non-member being a Minister, and instances have been known of a Minister being for a short time without a seat in either House. But the unwritten rule is as stated above. Appointment to all Cabinet offices is made by the Governor-General on the recommendation of the Premier. It is the right and privilege of the Premier to choose his colleagues and to submit these names to the Governor-General for appointment. Every member of a Cabinet so chosen must, in the event of death or resignation of the Premier, at once resign his portfolio. It is open to a member of the Cabinet before a Government Bill is submitted to Parliament to take issue with his colleagues as to the policy embodied in the measure or as to its principles or as to details. If his colleagues refuse to accept his view and he persists in his opposition, constitutional usage demands that he resign. A Bill submitted to Parliament as a Government measure may—and often does—involve the fate of the Government. Every member of the Cabinet must, therefore, support it in Parliament by voice and vote. There can be differences of opinion between members of the Cabinet on "open questions." The difference of opinion should not be expressed on any motion which originated from the Cabinet.

3. It is usual for the Premier of the Dominion to summon to his Cabinet men who are Premiers of Provincial Governments or leaders of the opposition in Provincial Legislatures. Men so summoned to Ottawa are, of course, initially without seats in the Dominion House of Commons. If they accept the Premier's offer, as they usually do, they have to resign their offices in the Provincial Governments and their seats in the Provincial Legislatures, and seats have to be found for them in the Dominion House of Commons without delay. These are usually secured by persuading sitting members to resign on the promise of a nomination to the Senate.

4. In considering the claims of various candidates for ministerial office, the Premier of the Dominion, unlike the Prime Minister in England, has to take into account race, religion, and geographical factors. When the total number was 23, three were usually assigned to French-Canada and three to Ontario; at least one was assigned to each of the Provinces of Nova Scotia, New Brunswick, Manitoba, Saskatchewan, Alberta and British Columbia, and a politician of Irish extraction usually represented the English-speaking Roman Catholic Church. There is also a custom, though this is not invariably followed, to assign certain Cabinet offices to particular Provinces. The freedom of choice of the Premier has in recent years been further restricted by the claims of the financial interests of Montreal and Toronto and the tariff interests centering in these cities that they must have a voice in the selection of the minister of finance.

5. All Cabinets contain two or even three ministers without portfolio. These ministers are sworn as members of the King's Privy Council of Canada. They attend Cabinet meetings and share in the collective responsibility of the Cabinet. The appointment of such ministers is often made :—

(1) to secure for the Cabinet the aid and influence of strong men who are not free to devote themselves entirely to politics ;

(2) to satisfy the claims of a Province which otherwise might not be represented in the Cabinet ;

(3) to honour a man who has claims on the party in power.

### THE CABINET AND THE LEGISLATURE

6. The Dominion Legislature is composed of an Upper House, styled the Senate, and the House of Commons. Senators are, in fact, selected by the Cabinet, although under the Constitution Act, vacancies are to be filled by the Governor-General ; the result is that when a political party is in power for a long time and is then defeated in the House of Commons, its majority in the Upper House may still persist for a time. By convention, a Ministry can remain in office only so long as it can command a majority in the House of Commons. A Ministry must in the beginning have a working control of the House, though occasionally it can carry on with amazingly little foundation. The rule that any defeat on an issue of importance is fatal is not accepted in Canada ; the Government will not be discredited if it announces that it regards a matter as of consequence and yet overlooks a defeat. If the control of the Legislature passes from the Government, it can choose between resignation and dissolution.

### THE CABINET AND THE GOVERNOR-GENERAL

7. The Cabinet is the *de facto* Executive of the Dominion. The Governor-General, whenever there is a vacancy in the office, is appointed by the King primarily, if not solely, on the advice of the Canadian Cabinet. In all political matters the Governor-General acts only on the advice of the Cabinet. The Governor-General does not preside at meetings of the Cabinet. He can, however, discuss and advise ; but if after discussion the Ministry declines to modify its proposed line of action, there is normally no option for the Governor-General but to assent, for the responsibility belongs to ministers and not to him. A Governor-General may reject advice if he can secure, in the event of the resignation of the Ministry in consequence of his action, a new Ministry which will accept responsibility *ex post facto* for rejection of that advice.

## CHAPTER IV

## COMMONWEALTH OF AUSTRALIA

The Federal Ministers are appointed by the Governor-General. The number of Ministers is at present limited to ten and they hold such offices as the Parliament prescribes or, in the absence of such provision, as the Governor-General directs. No Minister can hold office for a longer period than three months unless he becomes a Senator or a member of the House of Representatives. The power to advise the Governor-General is formally vested in the " Federal Executive Council " whose members are appointed by the Governor-General. The Ministers are all members of the Executive Council and for all practical purposes they constitute the Council. There are in addition Assistant Ministers who correspond to honorary Ministers.

In practice, appointments of Ministers are made on the initiative of the Prime Minister. The number of Ministers drawn from the Senate is usually two. The Premier has, of course, to secure the Governor-General's approval of his selection, but that is a formality, though the Governor-General has the right to object on personal grounds to any unfit person. In the Labour Governments of Australia the selection of Ministers is done by the Parliamentary caucus and this extends even to the Premier. In these cases the Premier's right is reduced to the allocation of portfolios, even if so much is conceded.

As in the other Dominions and the United Kingdom, the unity of the Cabinet depends on the personality of the Prime Minister and it follows, therefore, that on his resignation the whole body of his Ministers are held to have resigned and merely to be remaining in office until routine business is disposed of and new Ministers take their place.

### CABINET AND LEGISLATURE

Ministers must possess the confidence of a majority of the House of Representatives(the Lower House of the Legislature).On defeat in that House on a vital issue a Ministry must resign unless it is granted a dissolution. As in Canada, so too in Australia, the principle that defeat on any issue of importance is fatal to the Ministry is not rigidly accepted. The Government will not be discredited if it announces that it regards a matter as of consequence and yet overlooks a defeat. If the control of the House passes from the Government through internal dissension or coalition of Opposition elements or other grounds, it can choose between resignation and dissolution and normally the latter course is preferred, for the former is regarded as an admission of failure. Further, practice has shown that it is a distinct advantage to be a party which dissolves and under whose auspices an election is held.

### CABINET AND THE GOVERNOR-GENERAL

As in Canada, the Governor-General, whenever there is a vacancy in the office, is appointed by the Crown primarily, if not solely, on the advice of the Cabinet in the Commonwealth. The Governor-General does not preside over business meetings of the Cabinet, which are summoned in the name of the Premier. He acts as the constitutional head of the Government advised by Ministers.

That a Governor-General should act on Ministerial advice is admitted in the Commonwealth ; but, as in Canada, with an important proviso. A Governor-General may reject advice if he can secure, in the event of the resignation of the Ministry in consequence of his action, a new Ministry which will accept responsibility *ex post facto* for rejection of that advice.

## CHAPTER V

## UNION OF SOUTH AFRICA

### EXECUTIVE

The Governor-General appoints his Ministers, not exceeding eleven in number to administer such departments of State of the Union as the Governor-General-in-Council may establish : they hold office during the pleasure of th Governor-General. No Minister can hold office for a longer period than three months unless he is or becomes a member of either House of Parliament

Whenever any Minister is from any cause unable to perform any of the functions of his office, the Governor-General-in-Council may appoint any member of the Executive Council (whether he has or has not been appointed as a Minister of State) to act for that Minister, either generally or in the performance of any particular function.

In law the body in which the power to tender advice to the Governor-General is vested is the Executive Council of which the Ministers are also members. The Ministers of State act in an advisory capacity only in so far as they are members of the Executive Council. The Executive Council is the larger body—like the Privy Council in England—and consists of all those persons who at any time have been sworn in as Executive Councillors, including not only the existing Cabinet Ministers but also those of the past. The members of the Executive Council are never dismissed, nor do they retire from the Council. The practice of constitutional government does not require the attendance of the whole Executive Council to advise the Governor-General: indeed such a course would be contrary to all ideas of Government by a Cabinet responsible to an elected Assembly. Only those Executive Councillors who are present Ministers of State are summoned to advise the Governor-General. Practice has rendered the Executive Council a more or less dormant body kept alive only by the pharaseology of proclamations and other documents of State. In the threory of law the executive power of the Government of the Union is vested in the Governor-General acting with the advice of the Executive Council but in practice the Cabinet functions as the Executive Council.

The Cabinet system in the Union of South Africa follows British precedents in every respect. The Governor-General summons the person whom he considers the most fitted for the purpose and requests him to undertake the task of forming the Ministry. The choice is in practice limited to one or other of the persons recognized by Parliament as the leader of the party which commands a majority in the House of Assembly. The Premier has unfettered discretion in chosing a Cabinet. Ministers are chosen from party leaders and those members of Parliament who are prominent in party Councils. They are chosen for their administrative and political skill, or because the power and influence which they wield with the electors make them useful and necessary elements of a democratic Government. The Premier is undoubtedly influenced by these considerations as well as by geographical factors such as endeavouring to give each province some representation in his Ministry. The most striking characteristic of South African politics is the remarkable stability of the Ministries. There is collective responsibility in the Cabinet. Accordingly, on the resignation of the Premier the whole body of Ministers are held to have resigned.

## THE GOVERNOR-GENERAL

The Governor-General is appointed on a Commission countersigned by the Prime Minister of the Union and not by a British Secretary of State. The Union Government is thus solely responsible for the appointment.

## THE CABINET, THE GOVERNOR-GENERAL AND THE LEGISLATURE

The relations between the Cabinet and the Governor-General are substantially the same as in Canada or Australia ; so too those between the Cabinet and the Legislature.

# CHAPTER VI

# IRELAND

## GOVERNMENT

The Government consists of not less than seven or more than fifteen members. The Prime Minister (Taoiseach ) is the master in his Government. He is nominated by the Dail (as the Lower House is called) and appointed by the President. The Prime Minister, with the approval of the Dail, nominates for appointment by the President the other members of the Government. The Prime Minister appoints a deputy (Tanaiste) who acts for all purposes in his place if he dies or becomes permanently incapacitated or is temporarily absent. The Prime Minister, his deputy and the Minister in charge of the Finance Department must be members of the Dail. The other Ministers must be in one chamber or another, but not more than two in the Senate (Seanad).

## GOVERNMENT AND THE LEGISLATURE

2. The Government is declared by the Constitution to be responsible to the Dail. It acts as a body and is collectively responsible for the Departments of State Administered by the members of the Government. When the Prime Minister resigns from office the other members of the Government are also deemed to have resigned from office, but the Prime Minister and other members of Government continue in office till the appointment of their successors. The Prime Minister can request any member of the Government to resign. If he refuses to comply with the request his appointment can be terminated by the President if the Prime Minister so advises. There cannot be any change of Government during a period of dissolution.

3. The Prime Minister must resign if he ceases to retain the support of a majority in the Dail unless on his advice the President allows him a dissolution and on the reassembly of the Dail he secures the support of a majority in the Dail.

## PRESIDENT

4. The President is elected by the people. The electorate is the same as that for the Dail. The election is by secret ballot on the system of proportional representation with the single transferable vote. He holds office for seven years from the date upon which he enters upon his office, unless before the expiration of that period he dies or resigns or is removed from office, or becomes permanently incapacitated, such incapacity being established to the satisfaction of the Supreme Court consisting of not less than five judges. A President is eligible for re-election to that office but only once. He shall not leave the State during his term of office save with the consent of the Government. He may be impeached for stated misbehaviour. A proposal in either House of the Legislature to prefer a charge against the President shall not be entertained unless upon a notice of motion in writing signed by not less than 30 members of that House. Any such proposal shall be adopted by a House only upon a resolution of that House supported by not less than two-thirds of the total membership thereof. When a charge is preferred by one House

the other House shall investigate the charge or cause the charge to be investigated. The President shall have the right to appear and to be represented at the investigation of the charge. If, as a result of the investigation, a resolution is passed supported by not less than two-thirds of the total membership of the House of the Legislature by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained and that the misbehaviour, the subject of the charge, was such as to render him unfit to continue in office, such resolution shall operate to remove the President from his office.

## GOVERNMENT AND THE PRESIDENT

5. The powers and functions conferred on the President by the constitution shall be exercisable and performable by him only on the advice of the Government, save where it is provided that he shall act in his absolute discretion or after consultation with or in relation to the Council of State, a purely advisory body composed of *ex-officio* the Taoiseach, the Tanaiste, the Chief Justice, the President of the High Court, the Chairmen of the Dail and the Senate, the Attorney-General, any ex-President or ex-Taoiseach or ex-Chief Justice or ex-President of the Free State, and such other persons not exceeding seven as may be appointed by the President, or on the advice or nomination of, or on receipt of any other communication from any other person or body. No power or function conferred on the President by any law shall be exercisable by him save only on the advice of the Government. In the event of the absence of the President, or his temporary incapacity or failure to exercise and perform the powers and functions of his office or any of them, the powers and functions conferred on the President shall be exercised and performed by a Commission consisting of the Chief Justice (or in his absence the President of the High Court), the Chairman of the Dail (or in his absence the Duputy Chariman) and the Chariman of the Senate (or in his absence the Deputy Chairman).

6. As instances of functions which the President may exercise in his absolute discretion or must exercise after consultation with the Council of State, we may mention the following : The President may in his absolute discretion refuse to dissolve the Dail on the advice of a Prime Minister who has ceased to retain the support of a majority in the Dail. The President may at any time after consultation with the Council of State convene a meeting of either or both of the Houses of the Legislature, communicate with the Houses by message or address—which has received the approval of Government—on any matter of national or public importance or address a message approved by the Government to the nation at any time on any such matter. He may after consulting the Council of State but in his discretion ask the Supreme court for an opinion on the question of the validity of any Bill which he is asked to resign. If the report is unfavourable he must refuse to sign. In the case of a Bill carried over the head of the Senate, if, within four days of its passage, a majority of the members of the Senate and not less than one-third of those of the Dail petition the President to decline signature, he may after consultation with the Council of State decide that the measure is of such national importance that the will of the people thereon should be obtained. Thereupon he can sign the measure only if approved at a referendum or by a resolution of the Dail passed within 18 months of his decision after a dissolution.

## CHAPTER VII
## SWEDEN

### EXECUTIVE

In Sweden the executive power is vested in the King who, however, acts only in Council. In theory, the King possesses an absolute veto ; but in practice, the Government is carried on in conformity with the views of the Cabinet which in turn derives its authority from the support it receives in the Legislature. The constitution does not prevent the King from acting against the advice of his Ministers and while the King's decisions must always be countersigned by the Minister's signature, it does not mean that responsibility has been assumed. If the decision is unconstitutional in the opinion of the Minister he must refuse to countersign. Since 1914, the King has not even on a single occasion forced decisions not acceptable to his Ministers. The procedure prescribed by the constitution has, therefore, become a mere formality.

### CABINET AND THE LEGISLATURE

2. The general principle that the Cabinet should have the positive support of the majority in Parliament is not observed, nor does the Cabinet secure a vote of confidence before it begins to function. The Cabinet continues in office so long as it is tolerated and makes room for a new Ministry only when the dissatisfaction of the Legislature is manifest. When a Cabinet crisis occurs, the usual course is for the Opposition that has defeated the Cabinet to assume responsibility for the formation of a new Ministry ; but occasionally Parliament is dissolved in order that a new basis for the Ministry may be furnished. Sometimes resort has also been had to brief "Civil Servants" Ministries. The Legislature, the Riksdag, has the power to examine the function and labours of the Cabinet and to impeach its members. The constitution provides for the appointment, in each regular session of the Riksdag, of two parliamentary officials whose special task is to supervise, on behalf of the Legislature, the civil and military administration of the country. These official receive complaints of citizens against Government official and are empowered to have recourse to the courts. This manner of safeguarding the rights of the citizens is said to be very effective in Sweden.

## CHAPTER VIII
## SWITZERLAND

### EXECUTIVE

The executive department of the Swiss Government is the Federal Council. It consists of seven members elected by the Federal Assembly acting as a unitary body, *i. e.*, the Council of State and the National Council sitting together under the Chairmanship of the President of the latter House. Constitutional usage prescribes that Zurich and Berne, being among the oldest of the Cantons and having the largest population, shall always be represented. A similar right is guaranteed in the same manner to Vaud, the largest of the French speaking Cantons. Usage further prescribes that another Romance Canton besides Vaud shall always be represented. The legal term of service of the Councillors is four years. There are seven separate administrative departments, each headed by one of the Federal Councillors. In theory, all important executive decisions are made by the Council as a body and the Council assumes corporate responsibility for them. In actual practice, however, many important executive decisions are made by the individual Councillors. Furthermore, many activities originally performed by the Council as a body have been passed on to specific Councillors and by them to their subordinates.

## EXECUTIVE AND LEGISLATURE

2. In theory, the executive is a servant of the Federal Assembly. This is implied in the Assembly's election of the Federal Council and the Assembly's use of the Council as a sort of Legislative Drafting Bureau. Executive servitude is made still more obvious by the Assembly's supervision over the executive. The executive must secure the Assembly's previous authorization or subsequent ratification for all acts relating to foreign nations, armed forces or even the ordinary conduct of public administration. The Assembly frequently issues directions in the form of resolutions or motions indicating the way in which the Council's functions are to be discharged. Though the Councillors are not members of the Assembly, they have the privilege of attending all plenary legislative sessions or committee meetings of the Assembly and participating in the debate. Neither constitution nor convention requires the resignation of Federal Councillors, should their policy conflict with the Assembly's. In such a case the Councillors change their policy in order to make it conform to the Assembly's expressed will.

3. Annually the Federal Assembly designates a member of the Federal Council to serve as President of the Confederation and a second member to serve as Vice-President. The constitution forbids the re-election of a serving President or Vice-President for a second consecutive term. Usually, the Vice-President succeeds the President and the two offices rotate among the members of the Federal Council. Although the Presidency of the Confederation is an office of some dignity, it has none but purely formal prerogatives, the principal one being that of presiding over the deliberations of the Federal Council.

4. In the opinion of two well-known English students, "the members of the Federal Council" yield to no other government in Europe in devotion to their country, in incessant hard work for a poor salary, and in thorough honesty and incorruptibility. A diplomatist who knew them well and appreciated their good qualities, aptly remarked that they reminded him of a characteristic industry of their own country that of watch-making. For, having to deal with very minute and intricate affairs, their attention is unremittingly engaged by the most delicate mechanism of government, by the wheels within wheels of federal and cantonal attributes, by the most careful balancing of relations between contending sects and churches, and by endeavours to preserve the proper co .nterpoise between two (French and German), not to say three (the third being Italian) nationalities. [Adams and Cunningham, "The Swiss Con-federation", p. 38.]

# CHAPTER IX

# U.S.A.

## EXECUTIVE

The executive power is vested in the President. He holds office for four years and is chosen directly by the people through an electoral college of about 530 members which is elected by the electors for the Congress from the 48 States. He is the Commander-in-Chief of the Army and Navy of the United states and all the militia of the several States. He has power by and with the advice and consent of the Senate to make treaties, provided two-thirds of the Senators present concur. He has also power to nominate and to appoint with like consent ambassadors, members of the Cabinet, judges of the Supreme Court, and certain other high officers. Every bill passed by the House of Representatives and the Senate before it becomes law must be pre-

sented to the President of the United States. If he approves, he signs it. If not he returns it with his objections to the House in which it originated. If after such reconsideration two-thirds of that House agree to pass the Bill in its original form, it is sent together with the objections to the other House by which it is likewise to be considered. If it is approved by two-thirds of that House it becomes law. The President does not take any initiative in the matter of legislation either directly or through his Ministers. All he does is to inform the Congress of the state of the nation and to recommend the measures which his experience in administration shows to be necessary. This function is discharged by a message which the President addresses to the Congress, the most important being sent at the beginning of each session.

CABINET

2. To assist him in the administration, the President has a Cabinet of ten appointed by him subject to the consent of the Senate. Any member of the Cabinet may be removed by the President. None of these Ministers can sit or vote in the Congress. The most important office in the Cabinet is that of the Secretary of State. He is in charge of the State Department, the chief duty of which is the conduct of foreign affairs. The other important posts are the Secretary of the Treasury, Secretary of War, and the Attorney-General who is also the Minister of Justice. The Ministers are not responsible to anybody except the President. The Ministers' acts are legally the acts of the President. The Cabinet does not work as a whole. It is a group of persons, each individually dependent on and answerable to the President, but with no joint policy and no collective responsibility except such as results from their common subordination to the President.

3. The President is personally responsible for his acts not to the Congress but to the people by whom he is chosen. He cannot avoid responsibility by alleging the advice of his Ministers, for he need not follow it and they are bound to obey him or retire. The adverse vote of the Congress does not affect his position. If he proposes to take a step which requires money and the Congress refuses the requisite appropriation, the step cannot be taken. Votes of censure will neither compel the President nor his Ministers to resign. The President, unless, of course, he is convinced that the nation has changed its mind since it elected him, is morally bound to follow up the policy which he professed as a candidate and which the majority of the nation must be held in electing him to have approved. If that policy is opposed to the views of the majority of the Congress, it may check it as far as it can. He has got the right to follow his own views and principles in spite of the Congress so far as the constitution and the funds at his disposal permit.

4. The President and his Cabinet have no recognised spokesmen in either House. The executive has no opportunity of leading and guiding the legislature and of justifying in debates its administrative acts. Either House of the Congress or both Houses jointly can pass resolutions calling on the President or his Ministers to take certain steps or disapproving steps they have already taken. The President need not obey such resolutions, need not even notice them. They do not shorten his term or limit his discretion. Either House of the Congress can direct a Committee to summon and examine a Minister. The Committee can do nothing more than question him. He may evade their questions and with impunity tell them that he means to take his own course. The Congress may refuse to the President the legislation he requires and by embarrassing him seek to compel his compliance with its wishes. In the

conduct of foreign affairs the President is obliged to bring his policy into harmony with the views of the majority of the Senate whose consent by a two-thirds majority is essential to the making of treaties. The Congress can control the President to a certain extent by refusing supplies on special projects. Ordinary supplies are, however, not withheld. In short, the President cannot be turned out of the White House or deprived of his title o the obedience of all federal officials except by a successful impeachment.

## CHAPTER X

### U. S. S. R.

### NATURE OF THE UNION

The U.S.S.R. (Union of Soviet Socialist Republics) is a Federal State formed on the basis of voluntary union by 12 Soviet Socialist Republics. The Centre has wide powers; foreign relations; national defence and internal security (that is, police); admission of new republics to the Union; establishment of the economic plan for the Union; banking, and industrial, agricultural, and commercial enterprises of all Union significance; money, credit, and insurance; determination of the fundamental principles of the use of land and the exploitation of natural resources; determination of the fundamental principles of education and public health; the organization of the judiciary; and so on. Not only does the enumeration cover a wide field, but "the establishment of the economic plan," which is a Central function, comprises almost every aspect of the life of the community and offers unlimited opportunities for interference with the units, in spite of the fact that the residuary or unenumerated powers are vested in them. These have, indeed, "the right freely to secede from the U.S.S.R.", but any activities in this direction are apparently treated by the Soviet Courts as treasonable, so that the practical value of the right is questionable.

### LEGISLATURE

2. The legislative power of the Union belongs to the Supreme Soviet which is elected for four years and consists of two Chambers with equal powers. The Supreme Soviet, sitting as a body, elects its "Presidium" consisting of a Chairman, 11 Vice-Chairmen, a Secretary and 24 Members. The Presidium appears to be a Standing Committee of the Supreme Soviet, exercising the highest powers; it convenes the sessions of the Supreme Soviet; it dissolves the Supreme Soviet when the two Chambers fail to agree; it holds referendums; it revokes the decisions and orders of the Council of People's Commissars of the Union (the Federal Executive Council) and of the units, if they violate the law; in the intervals between the sessions of the Supreme Soviet, it removes from office and appoints People's Commissars of the Union (that is, members of the Federal Executive Council) subject to subsequent confirmation by the Supreme Soviet, it bestows honours and decorations; it exercises the right of pardon; it appoints and dismisses the High Command of the Armed Forces; in the intervals between sessions of the Supreme Soviet, it has power to declare war, and at all times to order mobilization, to ratify and denounce international treaties; and so on. The Presidium—a Committee of the Legislature—thus exercises many of the executive powers which in British India are exercised by the Governor-General and even more.

## EXECUTIVE.

3. The main executive and administrative organ of state power in the U. S. S. R. is the Council of People's Commissars of the U. S. S. R. This Council is appointed by the Federal Legislature—the Supreme—Soviet at a joint session of the two Chambers and is composed of a Chairman, a Vice-Chairman, the People's Commissars of the U. S. S. R., the Chairman of the State Planning Commission and several other high officials. The composition has been somewhat altered since the adoption of the constitution of 1936. The People's Commissars of the U. S. S. R. are in charge of the federal de-departments (People's Commissariats of the U.S.S.R.). The People's Commissariats of the U.S.S.R. are of two kinds. (1) All-Union and (2) Union-Republic. The distinction between the two groups is that the first is concerned with what are regarded as purely federal matters, while the second deals with questions of joint concern to the centre and the units. The All Union people's Commissariats direct the branch of state administration entrusted to them over the entire territory of the U.S.S.R., either directly or through organs appointed by them. The Union-republic People's Commissariats direct the branch of state administration entrusted to them through identically named People's Commissariats of the units, namely, the Union republics, and administer directly only a specific, limited number of enterprises as listed and sanctioned by the Presidium of the Supreme Soviet. The All-Union People's Commissariats are Defence, Foreign Affairs, Foreign Trade, Railways, Communications, Water Transport, Heavy Industry and Defence Industry. The Union-republic People's Commissariats are Food Industry, Light Industry, Timber Industry, Agriculture, State Grain and Livestock Farms, Finance, Home Trade, Home Affairs, Justice and Health There have been alterations since the constitution was adopted ; in particular, the Republics of the U.S.S.R. have been given powers in the sphere of foreign relations and defence. The units have the right "to enter into direct relations with foreign States and conclude treaties with them" and also "to organize battle units of their own."

## EXECUTIVE AND LEGISLATURE

4. This Council is responsible to the Supreme Soviet of the U. S. S. R. and accountable to it; and, between sessions of the Supreme Soviet, to the Presidium of the Supreme Soviet. The Council of People's Commissars issues decisions and orders on the basis of and in fulfilment of the laws in force and controls their execution. Decisions and orders of the Council of People's Commissars of the U.S.S.R. have obligatory force and must be carried out throughout the entire territory of the U.S.S.R. The Council has the right, in respect of those branches of administration and economy which fall within the jurisdiction of the U.S.S.R., to suspend decisions and orders of the Councils of People's Commissars of the Union republics and to annul orders and instructions of individual People's Commissars of the U.S.S.R.

# CHAPTER XI

## AUSTRIA-HUNGARY

[*Under the Compact of 1867 and supplementary statutes*]

The union was a political curiosity ; it was not due to any ties of affection or loyalty to a common Fatherland, but rather to a fear of absorption by Germany or Italy in the case of Austria and by Russia in the case of Hungary.

2. There was a common monarch—Emperor of Austria and King of Hungary. He supervised the administration of matters common to both countries and appointed Ministers for the purpose.

3. The two units had a common army, a common direction of foreign affairs, and a terminable customs union. The Ministers of the Union were not responsible to any Central Legislature, for there was hardly any such Legislature. Even the customs tariff was enacted in the form of identical Acts of the Legislatures of the two units functioning separately. Besides the separate territories of the two units, there was joint territory; even for this, apparently, there was no joint Legislature.

## EXECUTIVE

4. For the administration of the common affairs, there were three joint Ministers : the Minister of Foreign Affairs, the Minister of War, and the Minister of Finance. It must be noted that the authority of the Joint Ministers was restricted to common affairs and that they were not allowed to direct or exercise any influence on affairs of government affecting separately one of the halves of the monarchy. The Minister of Foreign Affairs conducted the international relations of the dual monarchy and concluded international treaties, but commercial treaties and such State treaties as imposed burdens on the State or parts of the State or involved a change of territory required the preliminary assent of both units. The Minister of War was the Head for the administration of military affairs, except those of the special armies of the two units. But the Supreme command of the army was vested in the Monarch who had the power to take all measures regarding the whole army. It followed, therefore, that the total armed power of the dual monarchy formed a whole under the Supreme command of the Sovereign. The M nister of Finance had charge of the finances of common affairs, prepared the joint budget and administered the joint State debt.

5. The joint executive was in some measures "responsible" to a deliberative body whose function was practically confined to voting supplies and controlling the administration by examining the accounts, addressing interpellations, and the like. Even this body consisted of two halves sitting separately except in the single case of a difference of opinion. Each half or delegation contained 60 members and at a joint session, the number present from each had to be the same, any excess being excluded by lot. The Ministers could be impeached by a concurrent vote of the two halves. As the Hungarian delegation was almost solidly Magyar while the Austrian delegation was split up into various groups (Germans, Poles, etc.), this system, in practice, gave an advantage to Hungary. Indeed, it used to be said that Hungary enjoyed 70 per cent. of the power in the Empire for 30 per cent. of the cost. (In regard to the expenses of the joint monarchy, the arrangement was that they should be defrayed, as far as possible, out of the joint revenue, and that any balance should be paid, 70 per cent. by Austria and 30 per cent. by Hungary, that being about the ratio of the sums raised in 1867 by taxation in the two countries. The original arrangement was valid for ten years, but continued, with slight modifications, for a much longer period.)

6. Hungary had in fact a privileged position : she paid 32 per cent. of the expenses, furnished 44. 1 per cent. of the troops, was given 50 per cent. of the power by law, and had 70 per cent. of the power in practice. Apart from this feature, the arrangement furnishes a curious instance of a joint Executive without a joint Legislature and of a supply-voting body distinct from the law making body. Although owing to political necessity, the arrangement was made to work for nearly fifty years, the machinery was clumsy and required for its management and infinite amount of tact and skill. Government was, in fact, an endless series of compromises between legislative bodies belonging to different races jealous of each other.

# SAFEGUARDS FOR MINORITIES (I)

## CANADA

### WRITTEN CONSTITUTION

**Section 22***.—Of 96 members of the Senate, Quebec (which is mainly French and Roman Catholic) is given 24; Ontario (which is mainly British and Protestant) 24; Nova Scotia, New Brunswick and Prince Edward Island 24; the Western Provinces 24.

This distribution was made by the amending Act of 1915. There is thus parity in the Upper House for the 4 main divisions. When the distribution was made, the area and population figures stood thus :—

| Province | Area | Population |
|---|---|---|
| Quebec | 706 | 2,003 |
| Ontario | 407 | 2,523 |
| Nova Scotia | 52 | 938 |
| New Brunswick | | |
| Prince Edward Island | | |
| Manitoba | 1,115 | 1,715 |
| British Columbia | | |
| Saskatchewan | | |
| Alberta | | |

[The area is in thousands of square miles and the population in thousands.]

**Section 23***.—A candidate for Senate from Quebec must have property or residence *in constituency;* elsewhere, residence *in Province.* In other words Senators from Quebec represent various divisions of the Province; elsewhere they represent their Provinces at large. This is designed to safeguard French Canadian interests of the rural areas in Quebec (Porritt's "Evolution of the Dominion of Canada", *pp.* 26, 270, 271).

**Section 51***.—Regulates representation in the House of Commons after each decennial census, Quebec being always given 65 member and other Provinces in proportion to population relatively to Quebec: that is to say, there is assigned to each of the other Provinces such a number of members as bears the same proportion to its population as 65 bears to the population of Quebec. This secures that Quebec's representation shall not be less than is due to its population.

**Section 92(1)***.—The amendment of the Provincial constitution except as regards the office of the Lieutenant-Governor is a *Provincial* subject.

**Section 93.**—Very important. Restriction on legislative power of Province regarding education. Discussed separately. [See *p.* 3 *et seq.*, *infra.*]

*See Appendix.

**Section 94*.**—Quebec is not included while Ontario, Nova Scotia and New Brunswick are included in territories for which Parliament of Canada may make uniform laws on certain subjects.

**Section 98*.**—Judges for Quebec must always be from the bar of Quebec; similar provision for other three Provinces in *s.* 97 temporary.

**Section 133*.**—English and French both recognised in the Legislature and the courts not only of Quebec but also of Canada.

OUTSIDE WRITTEN CONSTITUTION

1. Under *s.* 41 of the British North America Act, the Parliament of Canada has power to regulate *franchise* for the Dominion House of Commons. But after an unhappy attempt between 1885 and 1898 the Dominion Parliament has not exercised the power and has in effect left the matter to the Provincial Legislatures. (Porritt, *op. cit.*, *pp.* 309, 317—324; Egerton's "Federations and Unions in the British Empire", *p.* 133 footnote). This is in accord with federal principles.

2. Under *s.* 40 of the British North America Act, the Parliament of Canada may re-constitute electoral districts. This is usually done at the decennial re-distribution of representation. During the Conservative regime of 1878—1896, there was the most glaring *gerrymandering* or manipulation of boundaries of constituencies, so as to make them safe for Conservative democracy. In 1903 the Liberals introduced the practice, since followed, of referring the re-distribution bill to a Committee of 7, 4 *Government and* 3 *Opposition*. This ended the scandals of the gerrymander. Laurier, in introducing the bill of 1903, said, "What we claimed for ourselves when we were in a minority, we are now ready to grant to our opponents when they are in a minority." Thus the safeguard against gerrymandering rests on a convention. [Porritt, *op. cit.*, *pp.* 310—314.]

3. It is usual for the Prime Minister of the Dominion to summon to his Cabinet Premiers of Provincial Governments or leaders of the Opposition in Provincial Legislatures. If they accept the Prime Minister's offer, as they almost invariably do, they must resign their seats in the Provincial Legislatures and any offices they may hold in the Provincial Governments. Out of 23 Ministers (the usual number when Porritt wrote), 3 were assigned to Quebec (or French-Canada); 3 to Ontario; 1 to each of the Provinces of Nova Scotia, New Brunswick, Manitoba, Alberta, Saskatchewan and British Columbia. There is always one English speaking Roman Catholic, usually a politician of Irish extraction from Quebec.

4. Ministers without portfolio. In some Dominion Cabinets there have been as many as 4 Ministers without portfolio. They are all members of the Privy Council of Canada. Advantages:—(1) To secure for the Cabinet strong men who are not free to devote their whole time to politics; (2) to satisfy the claims of a province which might otherwise go unrepresented in the Cabinet. These men are entitled to the prefix "Honourable" for life. *Cf.* "Rt. Hon." in England. Such Ministers exist both at the Centre and in the provinces: in the Ontario Ministry of 1912 there were as many as 3 without portfolio. "Distribution of Cabinet offices based on geographical considerations and on claims of race, religion and special financial and material interests is an innovation on the usages and traditions of the cabinets at Westminster. The innovation has been developed by the differing conditions of Canada and the United

*See Appendix

Kingdom ; by the operation of the federal principle ; and by the need for conciliating assertive interests—racial and religious—which is as old in Canadian politics as the ill-assorted legislative union of Upper and Lower Canada of 1841—1867". [Porritt, *op. cit.*, *p.* 360].

5. Equal distribution of Parliamentary offices between British and French.

(1) Speaker of the House of Commons at Ottawa is *alternately* British and French Canadian *by custom*.

(2) Deputy Speaker, *by rules of House*, must possess "full and practical knowledge of the language which is not that of the Speaker for the time being" : practically, therefore, he must be alternately French and British Canadian.

(3) Nearly all the offices, important and unimportant, connected with Parliament, with the Senate as well as with the House of Commons, are distributed in accordance with these rules or usages—*i.e.* 50—50. These rules and usages are older than Confederation : an equal division of offices of the House of Commons is regarded by Quebec as necessary to the preservation of its rights and privileges—as necessary as *s.* 93 of the British North America Act. Even in 1920 Quebec had only 65 out of 234 members in the Dominion House of Commons, its population was less than one-third that of the Dominion, and its contribution to the Dominion revenues less than one-sixth ; yet there was this distribution of offices. "Practically every party leader in Canada managed Quebec as Sir————has managed that province. A little more than an equal division of the spoils of office, concessions here and concessions there to race and creed, and there you have the statesmanship of Canadian premiers of both Conservative and Liberal stripe". [Porritt, *op. cit.*, *pp.* 360, 382-384.]

**Section 93.**—A complicated and contentious provision, but unavoidable. The section runs thus :—

"93. In and for each Province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions :—

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the union.

(2) All the powers, privileges and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

(3) Where in any Province a system of separate or dissentient schools exists by law at the union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor-General in Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

(4) In case any such provincial law as from time to time seems to the Governor-General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor-General in Council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make amedial laws for the due execution of the provisions of this section and of any decision of the Governor-General in Council under this section".

Broadly speaking *s.* 93(1) invalidates a "prejudicial" law : (3) allows an appeal to the Governor-General in Council even from a valid law in certain cases : (4) gives power to the Dominion Legislature to "execute" the appellate decision by remedial legislation.

*Nature of issues that have so far arisen*

[1892] *A. C.* 445. *Winnipea* v. *Barrett and Winnipeg* v. *Logan.* Creation of *non-sectarian* schools at public charge.

At Union (1870). Manitoba had only sectarian schools, Catholic schools for Catholics and Protestant schools for Protestants. An Act of 1890 created non-sectarian schools for which all (Catholics and Protestants) had to pay. Did this Act prejudicially affect "any right or privilege with respect to denominational schools which any class of persons had by law *or practice** in the province at the Union"?

Court of Queen's Bench Manitoba answered—No.

Supreme Court of Canada unanimously answered—Yes.

Privy Council answered—No.

From the mere fact that only sectarian schools were in existence until 1870 it cannot legitimately be inferred that there was a privilege of never being required to support non-sectarian schools. This, at any rate, was the Privy Council's view ; but the case illustrates that different tribunals may interpret the same facts differently.

[1895] *A. C.* 202. *Brophy* v. *A. G. Manitoba.*—The question was whether above Act of 1890 affected any right or privilege of a minority in relation to education ; not, be it noted, any right or privilege which the minority had *at the Union* (1870), but any right or privilege which the minority had immediately before the passing of the impugned Act.

Supreme Court of Canada answered *No.* ; Privy Council answered *Yes.* Result of Privy Council's affirmative finding was that an appeal lay to the Governor-General in Council from the Act of 1890. ["Provincial authority" in *s.* 93 British North America Act includes Provincial *legislature.*]

[1917] *A. C.* 62. *Ottawa Separate School Trustees* v. *Mackell.*—Appeal from Supreme Court of Ontario. The question was whether a circular issued by the Education Department of Ontario in 1913 was hit by *s.* 93(1) and therefore invalid. Circular was designed to restrict the use of French. Both Courts held circular *valid.*

[Incidentally, Privy Council held that "right or privilege" means "a legal right or privilege" and does not include any practice, instruction, or privilege of a voluntary character†. Also that "any class of persons" must be a class determined according to religious belief and not according to race or language, presumably because of the preceding reference to "denominational schools". A class of persons having rights or privileges with reference to denominational schools must necessarily be a class belonging to a particular religious denomination.

During the pendency of the case, Ontario passed an Act to "authorize" the circular.]

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*The additional words " or practice " are in force so far as Manitoba is concerend. They do not occur in *s.* 93 (1) of the British North America Act, 1867.

†See also [1928] A. C. 363, 372 : rights and privileges must be *such as are given by law*

[1917] *A. C.* 76. *Ottawa Separate Schools Trustees* v. *Ottawa Corporation.*—The question was whether a certain provision (*s.* 3 of an Ontario Act of 1915) empowering the Minister of Education to suspend school trustees was valid. Sir John Simon's contention was that it deprived the supporters of Roman Catholics separate schools of their right to elect trustees under the Separate Schools Act of 1863.

Supreme Court of Ontario, agreeing with trial Judge, said provision was *valid.* Privy Council held *invalid.*

[1928] *A.C.* 363. *Roman Catholics Separate School Trustees for Tiny (Township)* v. *The King.*—Contains an elaborate discussion by Lord Haldane of *s.* 93 as compared with the corresponding Quebec Resolution (No. 43). The Resolution merely invalidated a prejudicial Provincial law : but the section grants relief (by way of appeal to Governor-General in Council) against *administrative unfairness* also.

The question was whether a number of Ontario laws commencing from 34 Vict. *c.* 33 (*ss.* 36, 40) were invalidated by *s.* 93(1).

Trial Judge said—No.

Ontario Supreme Court said—No.

Canadian Supreme Court equally divided (3 : 3).

Privy Council said—No.

Decision involved full analysis of the "rights and privileges" (*i.e.* those given by *law*) of Roman Catholics re : denominational schools in Ontario prior to 1867. History of the development of education in Canada since the end of 18th century examined.

[1928] *A. C.* 200. *Hirsch* v. *Protestant Board of School Commissioners of Montreal.*—The question was whether an Act of 1903 of Quebec providing that Jews should for school purposes be treated as Protestants and have the same rights and privileges and obligations was valid. Question arose on a reference made in 1925 by the Lieutenant-Governor of Quebec.

Supreme Court of Canada—Partly No.

Privy Council—Partly No.

Both held Act of 1903 invalid so far as it would confer right of attendance at "dissentient schools" upon Jews, as if they were Protestants.

What is the upshot of all these decisions ?

(A) Questions of detailed interpretation apart, they show that the issue whether a particular religious denomination or religious minority had any rights or privileges—"by law or practice" in Manitoba and "by law" elsewhere—at a particular date with respect to a particular matter (denominational schools or education) is regarded as "justiciable".

(B) Relief has been given not only against unjust laws (by making them void) but also against unjust decisions of any provincial authority (by appeal to Governor-General in Council).

(C) Re : interpretation, note certain principles :—

(1) In British North America Act "rights or privileges" have been restricted to rights or privileges *given by law.*

(2) "Class of persons" in the context of *s.* 93(1), has been restricted to classes defined by religious belief.

(3) Rights or privileges exercised by the Roman Catholics of a particular area, not by virtue of being Roman Catholics but by virtue of their numerical superiority in the area for the time being are protected. [ (1928) *A. C.* 200.]

All the cases that came to Court were necessarily directed against "prejudicial" laws or circulars [(1917) *A. C.* 62] or regulations [ (1928) *A. C.* 363] and aimed at having them declared *ultra vires.*

## AUSTRIA-HUNGARY

### Under the Compact of 1867 and Supplementary Statutes

The Union was a political curiosity : it was not due to any ties of affection or loyalty to a common Fatherland, but rather to a fear of absorption by Germany or Italy in the case of Austria and by Russia in the case of Hungary.

The two units had a common army, a common direction of foreign affairs, and a terminable customs union. The Ministers of the Union were not responsible to any Central Legislature, for there was no such Legislature at all. Even the customs tariff was enacted in the form of identical Acts of the Legislatures of the two Units functioning separately.

Besides the separate territories of the two Units, there were the districts of Bosnia and Herzegovina which were joint territory; even for this, apparently, there was no joint Legislature.

The joint Executive was "responsible" to a deliberative body whose function was practically confined to voting supplies and controlling the administration by examining the accounts, addressing interpellations, and the like. Even this body consisted of two halves sitting separately except in the single case of a difference of opinion. Each half (delegation) contained 60 members and at a joint session, the number present from each had to be the same, any excess being excluded by lot. As the Hungarian delegation was almost solidly Magyar while the Austrian delegation was split up into various groups (Germans, Poles, etc.), this system, in practice, gave an advantage to Hungary. Indeed it used to be said that Hungary enjoyed 70 per cent. of the power in the Empire for 30 per cent. of the cost. In regard to the expenses of the joint monarchy, the arrangement was that they should be defrayed, as far as possible, out of the joint revenue, and that any balance should be paid, 70 per cent. by Austria and 30 per cent by Hungary, that being about the ratio of the sums raised in 1867 by taxation in the two countries. The original arrangement was valid for 10 years, but remained the same to the end except for slight modifications. Hungary had in fact a privileged position : she paid 32 per cent. of the expenses, furnished 41 per cent. of the troops, was given 50 per cent. of the power by law, and had 70 per cent. of the power in practice. Apart from this feature, the arrangement furnishes a curious instance of a joint Executive without a joint Legislature and of a supply-voting body distinct from the law-making body. Although the arrangement was made to work for nearly 50 years, the machinery was clumsy and required an infinite amount of tact and skill. There was no single authority with power to settle anything and every measure involved negotiation between the two delegations or the two parliaments and government became in consequence an endless series of compromises between legislative bodies belonging to different races jealous of each other. The true source of power lay in the two parliaments and to these the joint Ministers had no access. Only political necessity made this intricate mechanism workable.

[Lowell's "Governments and Parties in Continental Europe", Vol. II.]

## APPENDIX

SECTIONS OF THE BRITISH NORTH AMERICA ACT, 1867, REFERRED TO UNDER THE HEADING "CANADA".

*22. In relation to the Constitution of the Senate Canada shall be deemed to consist of three divisions:

(1) Ontario;

(2) Quebec;

(3) The Maritime Provinces, Nova Scotia and New Brunswick;

which three divisions shall (subject to the provisions of this Act) be equally represented in the Senate as follows: Ontario by 24 senators; Quebec by 24 senators; and the Maritime Provinces by 24 senators, 12 thereof representing Nova Scotia, and 12 thereof representing New Brunswick.

In the case of Quebec each of the 24 senators representing that Province shall be appointed for one of the 24 electoral divisions of Lower Canada specified in schedule A to Chapter 1 of "The Consolidated Statutes of Canada."

23. The qualifications of a senator shall be as follows:

(1) He shall be of the full age of 30 years.

(2) He shall be either a natural-born subject of the Queen, or a subject of the Queen naturalised by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the union, or of the Parliament of Canada after the union.

(3) He shall be legally or equitably seised as of freehold for his own use and benefit of lands or tenements held in free and common socage, or seised or possessed for his own use and benefit of lands or tenements held in franc-alleu or in roture, within the Province for which he is appointed, of the value of 4,000 dollars, over and above all rents, dues, debts, charges, mortgages and incumbrances due or payable out of or charged on or affecting the same.

(4) His real and personal property shall be together worth 4,000 dollars over and above his debts and liabilities.

(5) He shall be resident in the Province for which he is appointed.

(6) In the case of Quebec he shall have his real property qualification in the electoral division for which he is appointed, or shall be resident in that division.

51. On the completion of the census in the year 1871, and of each subsequent decennial census, the representation of the four Provinces shall be re-adjusted by such authority, in such manner, and from such time, as the Parliament of Canada from time to time provides, subject and according to the following rules:

(1) Quebec shall have the fixed number of 65 members.

(2) There shall be assigned to each of the other Provinces such a number of members as will bear the same proportion to the number of its population (ascertained at such census) as the number 65 bears to the number of the population of Quebec (so ascertained).

(3) In the computation of the number of members for a Province a fractional part not exceeding one-half of the whole number requisite for entitling the Province to a member shall be disregarded; but a fractional part exceeding one-half of that number shall be equivalent to the whole number.

(4) On any such re-adjustment the number of members for a Province shall not be reduced unless the proportion which the number of the population of the Province bore to the number of the aggregate population of Canada at the then last preceding re-adjustment of the number of members for the Province is ascertained at the then latest census to be diminished by one-twentieth part or upwards.

(5) Such re-adjustment shall not take effect until the termination of the then existing Parliament.

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*Amended by section 1 (1) (ii) of "The British North America Act, 1915", which reads as follows:—"The divisions of Canada in relation to the constitution of the Senate provided for by section 22 of the said Act are increased from three to four, the fourth division to comprise the Western Provinces of Manitoba, British Columbia, Saskatchewan, and Alberta, which four divisions shall (subject to the provisions of the said Act and of this Act) be equally represented in the Senate, as follows:—Ontario by 24 senators; Quebec by 24 senators; the Maritime Provinces and Prince Edward Island by 24 senators, 10 thereof representing Nova Scotia, 10 thereof representing New Brunswick, and 4 thereof representing Prince Edward Island; the Western Provinces by 24 senators, 6 thereof representing Manitoba, 6 thereof representing British Columbia, 6 thereof representing Saskatchewan and 6 thereof representing Alberta."

92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated ; that is to say :—

(1) The amendment from time to time, notwithstanding anything in this Act, of the constitution of the Province, except as regards the office of Lieutenant-Governor.

* * * * * *

94. Notwithstanding anything in this Act, the Parliament of Canada may make provision for the uniformity of all or any of the laws relative to property and civil rights in Ontario, Nova Scotia and New Brunswick, and of the procedure of all or any of the courts in those three Provinces, and from and after the passing of any Act in that behalf the power of the Parliament of Canada to make laws in relation to any matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted ; but any Act of the Parliament of Canada making provision for such uniformity shall not have effect in any Province unless and until it is adopted and enacted as law by the Legislature thereof.

98. The judges of the courts of Quebec shall be selected from the bar of that Province.

133. Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec ; and both those languages shall be used in the respective records and journals of those Houses ; and either of those languages may be used by any person or in any pleading or process in or issuing from any court of Canada established under this Act, and in or from all or any of the courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

## SAFEGUARDS FOR MINORITIES (II)

[Except where otherwise indicated, the following extracts are taken from "Constitutional Provisions concerning Social and Economic Policy", published by the International Labour Office, 1944.]

*Polish Minorities Treaty, 28th June 1918.*

*The following provisions from the Treaty relating to the Protection of Minorities between the Allied and Associated Powers and Poland signed at Versailles, 28th June 1919 were the model for the minority provisions included in the treaties of peace with Austria, Hungary, Bulgaria, and Turkey, for the minority treaties concluded with Czechoslovakia, Yugoslavia, Rumania, and Greece, and for the declarations made by Albania, Lithuania and other states at the time of their admission to the League of Nations.*

1. Poland undertakes that the stipulations contained in articles 2 to 8 of this Chapter shall be recognised as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

2. Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion.

All inhabitants of Poland shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

7. All Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Differences of religion, creed or confession shall not prejudice any Polish national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.

No restriction shall be imposed on the free use by any Polish national of any language in private intercourse, in commerce, in religion, in the press or in publications of any kind, or at public meetings.

Notwithstanding any establishment by the Polish Government of an official language, adequate facilities shall be given to Polish nationals of non-Polish speech for the use of their language, either orally or in writing, before the courts.

8. Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationals. In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

9. Poland will provide in the public educational system in towns and districts in which a considerable proportion of Polish nationals of other than Polish speech are residents adequate facilities for ensuring that in the primary

schools the instruction shall be given to the children of such Polish nationals through the medium of their own language. This provision shall not prevent the Polish Government from making the teaching of the Polish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Polish nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes.

The provisions of this article shall apply to Polish citizens of German speech only in that part of Poland which was German territory on 1 August 1914.

10. Educational Committees appointed locally by the Jewish communities of Poland will, subject to the general control of the State, provide for the distribution of the proportional share of public funds allocated to Jewish schools in accordance with article 9, and for the organisation and management of these schools.

The provisions of article 9 concerning the use of languages in schools shall apply to these schools.

11. Jews shall not be compelled to perform any act which constitutes a violation of their Sabbath, nor shall they be placed under any disability by reason of their refusal to attend courts of law or to perform any legal business on their Sabbath. This provision however shall not exempt Jews from such obligations as shall be imposed upon all other Polish citizens for the necessary purposes of military service, national defence or the preservation of public order.

Poland declares her intention to refrain from ordering or permitting elections, whether general or local, to be held on a Saturday, nor will registration for electoral or other purposes be compelled to be performed on a Saturday.

12. Poland agrees that the stipulations in the foregoing articles, so far as they affect persons belonging to racial, religious or linguistic minorities constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, the British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these articles which is in due form assented to by a majority of the Council of the League of Nations.

Poland agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

Poland further agrees that any difference of opinion as to questions of law or fact arising out of these articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any such dispute

shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under article 13 of the Covenant.

## ESTONIA

### *Constitution of 15th June 1920*

II. Fundamental rights of Estonian Citizens

21. The members of minority nationalities within the confines of Estonia may form corresponding autonomous institutions for the promotion of the interests of their national culture and welfare in so far as these do not run contrary to the interests of the State.

### *The Estonian Cultural Autonomy Law of February 5, 1925* *

This law consists of thirty-one paragraphs, of which the first declares the autonomous institutions of the national minorities to derive their authority from the same Estonian legislation as authorises the establishment of local self-governing institutions. Like the latter, the minority institutions can act only in accordance with the law of the land.

*Para. 2.*—The competence of the minority autonomous institutions includes :

(*a*) The organisation, administration and supervision of the public and private educational establishments of the minority in question.

(*b*) The care of the other cultural needs of the minority concerned and the administration of institutions and undertakings created to this end.

The self-administration of the welfare institutions of the minority is regulated by a special law.

*Para. 3.*—The cultural autonomous administration is entitled to enact bye-laws, binding on its members, within the sphere defined in Para. 2.

*Para. 4.*—The public school organisation of the minority is determined jointly by the minority-administration and the local authorities concerned, and confirmed by the Government on the motion of the Minister of Education, who also acts as umpire should the minority-administration and local authorities disagree. Existing public schools with the language of instruction of the minority come under the control of the minority authorities. When a minority school is opened, or taken over, the State decides what subsidies or other services shall be provided for it by the local authorities.

*Para. 5.*—The organs of the national autonomy of each minority are its Cultural Council and its Cultural Administration. Subordinate institutions with local competence may also be created.

*Para. 6.*—The financial resources of the autonomous institutions are drawn from the following sources :

(*a*) Payments and other services made by the State for public elementary and secondary schools.

(*b*) Similar payments, etc., made by the local authorities, as decreed by the State.

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* *See* "The Future of India" by R. Coupland, Part III, *pp.* 186—188.

(*c*) Subsidies for cultural purposes from the State and autonomous authorities.

(*d*) Public taxes levied, if necessary, on its members by the National Council ; the rate and basis of such taxation to be authorised by the Government on the joint motion of the Ministries of Finance and Education.

*Para. 7.*—The local authorities are released from the obligation to provide instruction for the minority wherever the minority itself has assumed this duty.

*Para. 8.*—Under 'Minority' within the meaning of this law is understood the German, Russian and Swedish minorities, and any other minority numbering not less than 3,000 persons.

*Para. 9.*—Membership of a minority is determined by a national register, on which Estonian citizens of the above minorities may enter their names if at least 18 years of age. Children under 18 follow the nationality of the parents. If the parents are of different nationality, the nationality of the child is decided by agreement between them ; failing such agreement, the child follows the nationality of the father. A child reaching the age of 18 must register within a year if he wishes to belong to the minority.

*Para. 10.*—The names of members are erased from the register (*a*) on death, (*b*) on loss of Estonian citizenship, (*c*) on their own request. In cases (*b*) and (*c*) they must fulfil their financial obligations up to the end of the current year. Members leaving the register under (*c*) may apply for readmission ; but the autonomous authorities have the right to refuse the request.

*Para. 11.*—Voting members of the minority are registered members of full age entitled to vote in communal elections.

*Para. 12.*—Membership of the minority does not exempt any person from his obligations as a citizen or from his local obligations.

*Para. 13.*—If, for unavoidable reasons, members of a minority make use of State or local institutions when they possess such institutions of their own, subsidised out of public funds, the minority autonomous institutions must defray the cost.

*Para. 14.*—The Government may dissolve the Cultural Council, when a new Council must be elected within three months.

*Para. 15.*—The minority institutions are dissolved :

(*a*) if the Cultural Council so decides, by a two-thirds majority, or

(*b*) if the membership of the minority sinks below 3,000, or if the registered adult membership falls to below 90 per cent. of the total of the minority as shown by the last census.

*Para. 16.*—Minorities wishing to set up autonomous institutions inform the Government to that effect.

*Paras. 17 ff.* regulate the elections to the first Cultural Council, laying down a procedure analogous to that of the compilation of ordinary voting lists. If less than 50 per cent. of the persons registered as voters take part in the election, no Council is elected, and no further application can be entertained for three years. If a sufficient number of voters take part in the election, the President of the Committee appointed for the purpose (designated by the

minority and confirmed by the Government) arranges for the election of the Cultural Council, which again has to decide whether it wishes to exercise the autonomy envisaged. If it does so decide by a two-thirds majority, the State declares the autonomy to be in force, and must take all the necessary administrative steps within four months. If this majority is not obtained, the Council is dissolved, and no further application may be made for three years. The costs of the election are borne by the minority.

*Para. 31.*—In regions where a minority is in a local majority, the State may establish a local national-cultural self-government for its subjects who are Estonians by nationality.

The explanatory statement which accompanies this law is in many respects more interesting, and indeed more illuminating, than the law itself. In a preamble it points out how other States, notably Russia, had failed to solve the problem of the co-existence of various nationalities within its frontiers. If the principle of the equality of rights of all citizens is to be effective, then every member of a minority in a State must have the same possibilities of national-cultural development as the majority. And clearly each people knows its own cultural needs best.

Two fundamental articles of the Estonian constitution are quoted :

(*a*) 'All Estonian citizens are equal before the law. Differences of birth, religion, sex, status or nationality cannot be the cause of any favour or discrimination in public life.'

(*b*) 'Every Estonian citizen is free to determine his own nationality. If he cannot do this personally, the law shall do so.'

Other fundamental laws guarantee members of minorities instruction in their mother-tongues and allow for the possibility of self-government on national-cultural matters.

The Committee set up to elaborate the Cultural Autonomy Law worked on certain principles, as follows :—

As Estonia was the first State to work out legislation of this kind, and had no precedents to work on, the law had to be provisional and general in character.

All minorities of Estonia must be placed on the same footing, *i.e.* given the same opportunities of cultural development.

Cultural autonomy is considered in law as a branch of ' social self-government '. It must therefore be under the control of the State, like the local self-government institutions.

It must rest not on the territorial, but on the personal basis.

A clear distinction must be drawn between the cultural development of the minority and its political requirements ; this is done by exact delimitation of the sphere of competence of the national self-government, and by the power retained by the Government to dissolve the Cultural Council, if it exceeds its powers, and to order new elections.

' Nationality ' is not taken as identical with ' race ' ; it is determined by the full declaration of the individual.

The term ' national minority ' means all Estonian citizens whose names are entered on the national register.

The law is then analysed and commented on. The national autonomous institutions possess legal personality, as institutions fulfilling public functions. The Government is a supervisory rather than a superior authority, except in so far as it has the power to dissolve the Cultural Council. The national institutions enjoy, however, complete freedom of action within their own sphere of competence. They are completely free in the choice of their organs and the election of their officials, and are treated like other State institutions in respect of stamp duty, etc.

The autonomous institutions control both the public and the private schools of their members. Their school councils have the same status *vis-a-vis* the Ministry of Education as the local school councils of the local authorities. They have, however, no authority over any schools giving instruction in the minority language but established for the benefit of persons other than members of the minority. They deal not only with schools but with other cultural institutions.

The organs are: the Cultural Council and the Cultural Administration As the general principle is personal, the Cultural Council represents all members of the minority, wherever domiciled; but its members are elected on a local basis, and subordinate councils may be created to deal with local problems.

Entry on the register is a matter for the free decision of the individual; but to prevent abuses the consent of the autonomous authorities is required if persons who have voluntarily left the organisation wish to re-register.

The State has the right and duty to supervise the activities of the institutions, and is therefore empowered, if necessary, to dissolve the Council and order new elections. The minority may itself close down its own functions.

The remainder of the explanatory statement elucidates the final provisions of the law relating to the system of election.

## HUNGARY

*Act respecting Religion, No. 20 of 1848.*

2. Complete equality and reciprocity, without distinction of any kind, are established for all religious denominations recognised by law in this country.

## IRELAND

*Constitution, 1937.*

*Religion*

44. (2) 1° Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

2° The state guarantees not to endow any religion.

3° The state shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

4° Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school

5° Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.

6° The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

## LITHUANIA

*Constitution of 15 May, 1928.*

### VII. The Right of National Minorities.

74. National minorities of citizens forming a considerable part of the body of citizens have the right, within the limits of the laws, autonomously to administer their own national cultural affairs—popular education, charity, material aid—and to elect representative organs in accordance with procedure provided by the law, to administer those affairs.

75. The national minorities mentioned in article 74 have the right, by virtue of special laws, to levy taxes upon their members for cultural needs and avail themselves of an appropriate portion of the amounts which are assigned by the State and autonomous administrations for the needs of education and charity, if those needs are not satisfied by the general establishments maintained by the State and autonomous administrations.

### Proportional Representation

One of the best safeguards for minority rights and interests is the system of election by proportional representation with the single transferable vote (P.R.) which has already been adopted in a large number of countries. Switzerland is a conspicuous example:

> "In the past there were bitter differences, religious and cantonal. But for a long period of years now, government has been stable. The responsibility for forming a government rests upon parliament; its first duty is to elect an Executive. The Swiss parliament is elected by P.R.

The late Lord Howard of Penrith, who was Britain's representative at Berne, Stockholm, Madrid and Washington, and who made a study of the working of governments, wrote as follows:—

> 'Two fundamental requirements of democracy, first that Government should be an expression of the people's will and secondly that it should work both smoothly and stably and not be subject to frequent crises, seem to have been met more successfully by the Swiss system than by any other in the world.' (*Theatre of Life*, Chapter VII.)

Sir Samuel Hoare (Lord Templewood) addressing his constituents in Chelsea (26th May, 1944) expressed the view that representative government might function more satisfactorily in Europe if the Swiss rather than the British form of Government was adopted. The New York review *Free World* organised

(August, 1943) an unofficial round table discussion on the future of Italy. In this discussion, Colonel Randolfo Pacciardi, an active member of the Left, said :—'The frequent crises of the Latin democracies, which have so greatly discredited representative democracy, can be avoided by a constitutional form like that which has been developed in Switzerland.' " [See P. R. Pamphlet No. 91, issued by the Proportional Representation Society, June 1945.]

The subject of proportional representation is important enough to be dealt with in a separate pamphlet.

[The following extracts are taken from "Constitutional Provisions concerning Social and Economic Policy" published by the International Labour Office, 1944.]

## PERU

*Constitution of the Republic of Peru, 29 March 1933, as amended 1936 and 1939*

TITLE XI.—*The native communities.*

207. The Indian communities have a legal existence and juridical personality.

208. The State guarantees the integrity of the property of the communities. The law shall organise the corresponding register of real property.

209. The property of the communities is imprescriptible and inalienable, except in case of expropriation on account of public utility, on payment of compensation. It is, moreover, not attachable.

210. Neither the municipal councils nor any corporation or authority shall intervene in the collection or administration of the income and property of the communities.

211. The State shall endeavour to provide by preference lands for the native communities which do not possess them in sufficient quantity for their needs, and may expropriate lands in private ownership for this purpose, on payment of compensation.

212. The State shall issue the civil, penal, economic, educational and administrative legislation which the peculiar conditions of the natives demand.

## SYRIA

*Constitution of the State of Syria, 14 May 1930.*

PART V.—*Miscellaneous provisions.*

113. The affairs of the Bedouin tribes shall be under the direction of a special Administration; its powers shall be the subject of a law, in which consideration will be given to the special situation of these tribes.

## WESTERN AUSTRALIA

*An Act to further Amend the Constitution Act of 1889, and to Provide for the Better Protection of the Aboriginal Race of Western Australia, 1897.*

5. There shall be a sub-department, to be called the Aborigines Department, and to be charged with the duty of promoting the welfare of the aboriginal Natives, providing them with food and clothing when they would otherwise be destitute; providing for the education of aboriginal children (including half castes), and in generally assisting in the preservation and well-being of the Aborigines.

* * * * * * *

7. It shall be the duty of the Aborigines Department:

(I) To apportion, distribute and apply as it may seem most fit, the monies by this act placed at their disposal;

(2) To distribute blankets, clothes and other relief to the Aborigines at the discretion of the Department ;

(3) To provide for the custody, maintenance and education of the children of Aborigines ;

(4) To provide as far as practicable for the supply of medical attendance, medicines, rations and shelter to sick, aged and infirm Aborigines.

(5) To manage and regulate the use of all reserves set apart for the benefit of the Aborigines ;

(6) To exercise a general supervision and care over all matters affecting the interests and welfare of the Aborigines and to protect them against injustice, imposition and fraud.

11. The Minister may cancel or may direct the cancellation of any contract of service between any aboriginal Native and any person who, in the opinion of the Minister, is unfit to be an employer of such a Native.

## COOK ISLANDS

*The Cook Islands Act, 1915.*

*The New Zealand Act No. 40 of 11 October 1915.*

### PART XI.—*The Native Land Court.*

409. *Miscellaneous jurisdiction of Native Land Court.*—In addition to the jurisdiction elsewhere conferred upon the Native Land Court by this Act, that Court shall have jurisdiction :

(*a*) To hear and determine as between Natives any claim to the ownership or possession of Native freehold land, or to any right, title, estate, or interest in such land or in the proceeds of any alienation thereof ;

(*b*) To determine the relative interests of the owners in common of Native freehold land, whether any of those owners are Natives or Europeans ;

(*c*) To hear and determine as between Natives any claim to recover damages for trespass or any other injury to Native freehold land ;

(*d*) To grant an injunction against any Native in respect of actual or threatened trespass or other injury to Native freehold land ;

(*e*) To grant an injunction prohibiting any person from dealing with or doing any injury to any property which is the subject matter of any application to the Court ;

(*f*) To hear and determine any question as to the right of any person to hold office as an Ariki or other Native chief of any island.

### PART XII.—*Customary Land.*

422. *Native customs to be recognised.*—Every title to and interest in customary land shall be determined according to the ancient custom and usage of the Natives of the Cook Islands.

PART XVI.—*Alienation of Native land.*

*Restrictions on Alienation*

446. * * * * * * * * * *

(2) Subject to the provisions of this Act, a Native may alienate or dispose of any land or of any interest therein in the same manner as a European, and Native land or any interest therein may be alienated or disposed of in the same manner as if it was European land.

467. *Alienation of customary land prohibited.*—No person shall be capable of making, whether by will or otherwise, and whether in favour of a Native or of a European or of the Crown, any alienation or disposition of customary land or of any interest therein.

*Native Reservations.*

487. *Governor-General in Council may establish Native reservations.*—(1) When any Native land, whether freehold or customary, is owned by more than ten owners in common, whether at law or in equity, the Governor-General may by Order in Council, on the recommendation of a Judge of the Native Land Court, set apart and reserve that land or any part thereof for the common use of the owners thereof as a burial-ground, fishing-ground, village, landing-place, place of historical or scenic interest, source of water-supply, church-site, building-site, recreation-ground, bathing-place, or for the common use of the owners thereof in any other manner.

(2) Any Native land so set aside and reserved is herein referred to as a Native reservation.

489. *Reservations inalienable.*—Land included in a Native reservation shall be inalienable, whether to the Crown or to any other person, and whether by will or otherwise; and no freehold order, partition order, or order of exchange shall be made in respect thereof.

490. *Ordinances as to reservations.*—The Island Council may make such ordinances as it thinks fit for the management and control of any Native reservation.

*Miscellaneous.*

491. *Native land not to be taken in execution.*—(1) No interest of any person in customary land, and no interest of a Native in Native land, shall be capable of being taken in execution or otherwise rendered available by any form of judicial process for the payment of his debts or liabilities, whether in favour of His Majesty or in favour of any other person.

(2) Nothing in this section shall affect the operation of any charge to which Native land is subject.

## PORTUGUESE COLONIES

*Organic Charter of the Portuguese Colonial Empire, 15 November 1933.*

CHAPTER VIII.—*Natives.*

231. Substantially identical with article 15 of the Colonial Act, which is in the following terms: "15. The State guarantees the protection and defence of the Natives of the colonies, in accordance with the principles of humanity and sovereignty, the provisions of this part and the international conventions which are at present in force or may come into operation.

The colonial authorities shall prevent and punish in accordance with the law all abuses against the persons and property of the Natives."

232. It shall be the duty of all the colonial administrative authorities to ensure to Natives the exercise of their rights, respect for their persons and property and enjoyment of the exemptions and benefits granted them by law, to defend them against undue exactions, violence or vexatious proceedings of which they may be the victims and to enforce payment of the wages due to them.

233. All the authorities and all settlers shall protect the Natives. It shall be their duty to ensure the preservation and development of the various peoples and contribute in every case to the improvement of the conditions under which they live ; they shall be bound to support and encourage measures for the civilisation of the Natives and for the promotion of their affection for Portugal as their Mother Country.

234. Special attention shall be paid in the administrative division of the Colonies to the density of the Native population, its wealth, commercial activities and agricultural development.

235. In every Colony the Native population shall be organised for purposes of relief, public administration and military defence, and wherever possible the services of the traditional Native authorities shall be utilised in accordance with the law.

236. A general register or census of the Native peoples shall be organised and always kept in due form.

238. The State shall set up public institutions and promote the establishment of private institutions, both being Portuguese, to protect the rights of Natives or for their relief and education.

239. The ownership and possession of their lands and crops shall be guaranteed to the Natives by law under the terms and conditions set forth therein, and this principle shall be observed in all concessions granted by the State and the administration thereof shall be strictly supervised.

240. The State shall not impose forced or compulsory labour of any kind for private purposes on the Natives in its Colonies, nor permit the imposition thereof, but shall not hinder them from procuring the means of subsistence by work.

242-243. Substantially identical with articles 18 and 19 of the Colonial Act, which are in the following terms :—

" 18. The labour of Natives in the service of the State or in that of administrative bodies shall be remunerated.

19. The following shall be prohibited :

(1) All systems under which the State undertakes to furnish native labourers to any enterprises working for their own economic development.

(2) All systems under which the Natives in any territorial area are compelled to furnish labour to the said enterprises for any consideration ".

244. The system of contracts of employment of Natives shall be based on the liberty of the individual and the right to fair wages and relief ; the public authorities shall intervene solely for purposes of supervision.

*Sole sub-section.*—Natives in the Portuguese Colonies shall be ensured liberty to choose the occupation which they prefer, whether they engage therein for themselves or for another, on their own land or on land intended for that

purpose in the territories of the Empire. Nevertheless, the State shall reserve the right of guardianship over them and endeavour to guide them to methods of work for themselves which will improve their individual and social situation.

246. Attention shall be paid in the Colonies to the stage of evolution of the various Native populations ; special Native codes shall be drawn up, which shall lay down for them (subject to the influence of Portuguese public and private law) legal systems in conformity with their various domestic and social customs and usages (provided that the said customs and usages are not incompatible with morality, the dictates of humanity or the free exercise of the sovereignty of Portugal) and efforts shall be made to bring about their gradual improvement.

## SOUTHERN RHODESIA

*Letters Patent providing for the Constitution of Responsible Government.*

*1 September 1923, as amended to 22 October 1937.*

40. No conditions, disabilities or restrictions which do not equally apply to persons of European descent shall, without the previous consent of the Secretary of State, be imposed upon Natives (save in respect of the supply of farms, ammunition and liquor) by any proclamation, regulation or other instrument issued under the provisions of any law, unless such conditions, disabilities or restrictions shall have been explicitly prescribed, defined and limited in such law.

41. (1) There shall be established a Board of Trustees, which shall consist of a chairman, who shall be nominated and appointed by the Secretary of State, and two members, one of whom shall be the person for the time being holding the office of Chief Justice of the Colony and the other shall be the person for the time being holding the office of Chief Native Commissioner in the Colony.

* * * * * * * * * * * * *

42. (1) The lands known as " Native Reserves ", which are fully described in the Schedule to these our Letters Patent, are hereby vested in the Board of Trustees, and, subject to the provisions of this section, are set apart for the sole and exclusive use and occupation of the indigenous Native inhabitants of the Colony.

(2) Save in the exercise of any right which has been heretofore acquired in terms of the mining laws of the Colony, no person other than indigenous Native inhabitants of the Colony shall occupy any portion of a Native reserve except in accordance with such regulations as may be framed by the Governor in Council with the approval of the Secretary of State.

(3) The power reserved to the High Commissioner in sections 105 and 106 of " The Water Act, 1927 ", and sections 16 and 18 of " The Native Reserve Forest Produce Act, 1929 ", of the Legislature of the Colony shall remain of full force and effect and shall be deemed to be transferred to and vested in the Board of Trustees.

(4) The Governor in Council may make regulations, which shall be subject to the approval of the Secretary of State, for the control of all revenue derived from the land or other natural resources of the Native reserves and for its administration in the interests of the Native inhabitants of such reserves.

43. (1) Save in any special case, and then only with the permission in writing of the Secretary of State, and subject to such conditions as he may

prescribe, which shall include adequate compensation in land, no Native reserve or any portion thereof shall be alienated except subject to the provisions of this section.

(2) The Government of the Colony shall retain the mineral rights in the Native reserves. If the Government should require any such land for the purpose of mineral development or as sites of townships or for railways or other public works, the Governor in Council may upon good and sufficient cause shown, with the approval of the Board of Trustees, order the Natives to remove from such land or any portion thereof and shall assign to them just and liberal compensation in land elsewhere situate in as convenient a position as possible, sufficient and suitable for their agricultural and pastoral requirements, containing a fair and equitable proportion of springs or permanent water and, as far as possible, equally suitable for their requirements in all respects as the land from which they are ordered to remove:

Provided that Natives shall not be removed from such land for the purpose of creating sites of townships unless the Board of Trustees is satisfied that such sites are required for the development of important mineral discoveries.

(3) Any land which is released from a Native reserve in terms of sub-section (2) of this section shall forthwith vest in the Governor, together with any revenues accruing therefrom, for the purposes of the public service of the Colony, and any land which is assigned to the Natives as compensation, whether under sub-section (1) or sub-section (2) of this section, shall forthwith vest in the Board of Trustees and become part of the Native reserves.

44. It shall be lawful for the Governor in Council, with the consent of the Board of Trustees, to make such adjustments of the boundaries of Native reserves as are desirable for the purpose of:

(*a*) More clearly demarcating such boundaries by reference to natural topographical features or,

(*b*) Better administration,

but in the case of any such adjustment the area of no Native reserve shall be materially affected or diminished thereby.

45. (1) Save in the exercise of any right given or any duty imposed by any law of the Colony or in the execution of the process of a competent court, no person shall remove any Natives from any kraal or from any land assigned to them for occupation except after full enquiry by and by order of the Governor in Council.

(2) If any person contravenes the provisions of the preceding sub-section, he shall, in addition to any other proceedings to which he may be liable, be guilty of an offence, and on conviction before the High Court of the Colony shall be liable to imprisonment, with or without hard labour, for any period not exceeding 2 years or to a fine not exceeding £100, or to both such imprisonment and such fine.

46. No contract for encumbering or alienating land, which is the property of a Native and is situated in the European area as defined in "The Land Apportionment Act, 1930", of the Legislature of the Colony, shall be valid unless the contract is made in the presence of a magistrate, is attested by him and bears a certificate signe by him stating that the consideration for the contract is fair and reasonabldand that he has satisfied himself that the Native understands the transaction.e

# PROTECTION OF TRIBAL RIGHTS AND INTERESTS (II)

## UNION OF SOUTH AFRICA

### *The South Africa Act, 1909*

*Section 151.*—The King, with the advice of the Privy Council, may, on addresses from the Houses of Parliament of the Union, transfer to the Union the government of any territories, other than the territories administered by the British South Africa Company, belonging to or under the protection of His Majesty, and inhabited wholly or in part by natives, and upon such transfer the Governor-General in Council may undertake the government of such territory upon the terms and conditions embodied in the schedule to this Act.

#### SCHEDULE

1. After the transfer of the government of any territory belonging to or under the protection of His Majesty, the Governor-General in Council shall be the legislative authority, and may by proclamation make laws for the peace, order, and good government of such territory: Provided that all such laws shall be laid before both Houses of Parliament within 7 days after the issue of the proclamation or, if Parliament be not then sitting, within 7 days after the beginning of the next session, and shall be effectual unless and until both Houses of Parliament shall by resolutions passed in the same session request the Governor-General in Council to repeal the same, in which case they shall be repealed by proclamation.

2. The Prime Minister shall be charged with the administration of any territory thus transferred, and he shall be advised in the general conduct of such administration by a Commission consisting of not fewer than three members with a secretary, to be appointed by the Governor-General in Council, who shall take the instructions of the Prime Minister in conducting all correspondence relating to the territories, and shall also under the like control have custody of all official papers relating to the territories.

3. The members of the Commission shall be appointed by the Governor-General in Council, and shall be entitled to hold office for a period of 10 years, but such period may be extended to successive further terms of 5 years. They shall each be entitled to a fixed annual salary, which shall not be reduced during the continuance of their term of office, and they shall not be removed from office except upon addresses from both Houses of Parliament passed in the same session praying for such removal. They shall not be qualified to become, or to be, members of either House of Parliament. One of the members of the Commission shall be appointed by the Governor-General in Council as vice-chairman thereof. In case of the absence, illness, or other incapacity of any member of the commission, the Governor-General in Council may appoint some other fit and proper person to act during such absence, illness, or other incapacity.

4. It shall be the duty of the members of the Commission to advise the Prime Minister upon all matters relating to the general conduct of the administration of, or the legislation for, the said territories. The Prime Minister, or another Minister of State nominated by the Prime Minister

to be his deputy for a fixed period, or, failing such nomination, the vice-chairman, shall preside at all meetings of the Commission, and in case of an equality of votes shall have a casting vote. Two members of the commission shall form a quorum. In case the Commission shall consist of four or more members, three of them shall form a quorum.

5. Any member of the Commission who dissents from the decision of a majority shall be entitled to have the reasons for his dissent recorded in the minutes of the Commission.

6. The members of the Commission shall have access to all official papers concerning the territories, and they may deliberate on any matter relating thereto and tender their advice thereon to the Prime Minister.

7. Before coming to a decision on any matter relating either to the administration, other than routine, of the territories or to legislation therefor, the Prime Minister shall cause the papers relating to such matter to be deposited with the secretary to the Commission, and shall convene a meeting of the Commission for the purpose of obtaining its opinion on such matter.

8. Where it appears to the Prime Minister that the despatch of any communication or the making of any order is urgently required, the communication may be sent or order made, although it has not been submitted to a meeting of the Commission or deposited for the perusal of the members thereof. In any such case the Prime Minister shall record the reason for sending the communication or making the order and give notice thereof to every member.

9. If the Prime Minister does not accept a recommendation of the Commission or proposes to take some action contrary to their advice, he shall state his views to the Commission, who shall be at liberty to place on record the reasons in support of their recommendation or advice. This record shall be laid by the Prime Minister before the Governor-General in Council, whose decision in the matter shall be final.

10. When the recommendations of the Commission have not been accepted by the Governor-General in Council, or action not in accordance with their advice has been taken by the Governor-General in Council, the Prime Minister, if thereto requested by the Commission, shall lay the record of their dissent from the decision or action taken and of the reasons therefor before both Houses of Parliament, unless in any case the Governor-General in Council shall transmit to the Commission a minute recording his opinion that the publication of such record and reasons would be gravely detrimental to the public interest.

11. The Governor-General in Council shall appoint a Resident Commissioner for each territory, who shall, in addition to such other duties as shall be imposed on him, prepare the annual estimates of revenue and expenditure for such territory, and forward the same to the secretary to the Commission for the consideration of the Commission and of the Prime Minister. A proclamation shall be issued by the Governor-General in Council, giving to the provisions for revenue and expenditure made in the estimates as finally approved by the Governor-General in Council the force of law.

12. There shall be paid into the Treasury of the Union all duties of customs levied on dutiable articles imported into and consumed in the territories, and there shall be paid out of the Treasury annually towards the cost of administration of each territory a sum in respect of such duties which shall bear to the total customs revenue of the Union in respect of each financial year the same proportion as the average amount of the customs revenue of such territory for the 3 completed financial years last preceding the taking effect of this Act bore to the average amount of the whole customs revenue for all the Colonies and territories included in the Union received during the same period.

13. If the revenue of any territory for any financial year shall be insufficient to meet the expenditure thereof, any amount required to make good the deficiency may, with the approval of the Governor-General in Council, and on such terms and conditions and in such manner as with the like approval may be directed or prescribed, be advanced from the funds of any other territory. In default of any such arrangement, the amount required to make good any such deficiency shall be advanced by the Government of the Union. In case there shall be a surplus for any territory, such surplus shall in the first instance be devoted to the repayment of any sums previously advanced by any other territory or by the Union Government to make good any deficiency in the revenue of such territory.

14. It shall not be lawful to alienate any land in Basutoland or any land forming part of the native reserves in the Bechuanaland Protectorate and Swaziland from the native tribes inhabiting those territories.

15. The sale of intoxicating liquor to natives shall be prohibited in the territories, and no provision giving facilities for introducing, obtaining, or possessing such liquor in any part of the territories less stringent than those existing at the time of transfer shall be allowed.

16. The custom, where it exists, of holding pitsos or other recognised forms of native assembly shall be maintained in the territories.

17. No differential duties or imposts on the produce of the territories shall be levied. The laws of the Union relating to customs and excise shall be made to apply to the territories.

18. There shall be free intercourse for the inhabitants of the territories with the rest of South Africa subject to the laws, including the pass laws, of the Union.

19. Subject to the provisions of this schedule, all revenues derived from any territory shall be expended for and on behalf of such territory: Provided that the Governor-General in Council may make special provision for the appropriation of a portion of such revenue as a contribution towards the cost of defence and other services performed by the Union for the benefit of the whole of South Africa, so however, that that contribution shall not bear a higher proportion to the total cost of such services than that which the amount payable under paragraph 12 of this schedule from the Treasury of the Union towards the cost of the administration of the territory bears to the total customs revenue of the Union on the average of the 3 years immediately preceding the year for which the contribution is made.

20. The King may disallow any law made by the Governor-General in Council by proclamation for any territory within one year from the date of the proclamation, and such disallowance on being made known by the Governor-General by proclamation shall annul the law from the day when the disallowance is so made known.

21. The members of the Commission shall be entitled to such pensions or superannuation allowances as the Governor-General in Council shall by proclamation provide, and the salaries and pensions of such members and all other expenses of the Commission shall be borne by the territories in the proportion of their respective revenues.

22. The rights as existing at the date of transfer of officers of the public service employed in any territory shall remain in force.

23. Where any appeal may by law be made to the King in Council from any court of the territories, such appeal, shall, subject to the provisions of this Act, be made to the Appellate Division of the Supreme Court of South Africa.

24. The Commission shall prepare an annual report on the territories which shall, when approved by the Governor-General in Council, be laid before both Houses of Parliament.

25. All bills to amend or alter the provisions of this schedule shall be reserved for the signification of His Majesty's pleasure.

# PROTECTION OF THE RIGHTS OF WOMEN AND CHILDREN

## INTRODUCTION

This pamphlet embodies the provisions contained in various Constitutions, Charters, and Declarations of Policy relating to the protection of the rights of women and children and may be of particular assistance to the women-members of the Constituent Assembly. Except where otherwise indicated, these extracts are taken from a publication of the International Labour Office entitled "Constitutional Provisions concerning Social and Economic Policy", 1944.

## THE COVENANT OF THE LEAGUE OF NATIONS

*28 June 1919*

*Article 23*

Subject to and in accordance with the provisions of international conventions existing or hereafter to be agreed upon, the Members of the League:

(*a*) will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend, and for that purpose will establish and maintain the necessary international organisation;

* * * * * * *

(*c*) will entrust the League with general supervision over the execution of agreements with regard to traffic in women and children. * * *

## THE CONSTITUTION OF THE INTERNATIONAL LABOUR ORGANISATION

*28 June 1919*

SECTION II—GENERAL PRINCIPLES

*Article 41*

The High Contracting Parties, recognising that the well-being, physical, moral and intellectual, of industrial wage earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section 1, and associated with that of the League of Nations.

They recognise that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

*Among these methods and principles, the following seem to the High Contracting Parties to be of special and urgent importance :*

*Sixth.*—The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

*Seventh.*—The principle that men and women should receive equal remuneration for work of equal value.

*Ninth.*—Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the High Contracting Parties are of opinion that they are well fitted to guide the policy of the League of Nations ; and that, if adopted by the industrial communities who are Members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage earners of the world.

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## CHARTER OF THE UNITED NATIONS

*26 June 1945*

*We the peoples of the United Nations determined*

* * * * * *

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small

* * * * * *

*Have resolved to combine our efforts to accomplish these aims.*

* * * * * *

*Article I.*—The Purposes of the United Nations are :

* * * * * *

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

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## EUROPE

### ALBANIA

*Fundamental Statute of the Kingdom of Albania, 1 December 1928*

PART VI—THE RIGHTS OF CITIZENS

206. The primary education of all Albanian subjects is obligatory, and the State schools are free.

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## AUSTRIA

*Constitution, 24 April 1934*

(Promulgated by a Proclamation of the Federal Government on 1 May 1934)

CHAPTER II—GENERAL RIGHTS OF CITIZENS

16. * * * * * *

(2) Except as otherwise provided by statutory provisions, women have the same rights and duties as men.

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## BULGARIA

*Constitution of the Kingdom of Bulgaria, 16 to 28 April 1879*

DIVISION VII—PUBLIC EDUCATION

78. Primary education is free and compulsory for all subjects of the Kingdom of Bulgaria.

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## CZECHOSLOVAKIA

*The Constitutional Charter of the Czechoslovak Republic, 29 February 1920*

SECTION V—RIGHTS, LIBERTIES, AND DUTIES OF THE CITIZENS

*Equality*

106(1) Privileges due to sex, birth, or occupation shall not be recognised.

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## DANZIG

*Constitution of the Free City of Danzig, 11 August 1920*

PART II—FUNDAMENTAL RIGHTS AND DUTIES

I—*Individuals*

72. All citizens of the Free City shall be equal before the law. No legislation which provides for exceptions shall be admissible.

Persons of both sexes shall have the same civil rights and duties.

There shall be no legal privileges or disqualifications due to birth, position, or creed.

79. Marriage as the foundation of family life shall be placed under the special protection of the State. It shall be based on the principle of equal rights for both sexes.

Large families shall have a claim to compensatory support.

Motherhood shall have a claim to the protection and support of the State.

80. The education of children to physical, intellectual, and social efficiency is the highest duty and natural right of parents.

The State shall supervise the execution of these duties.

81. The Law shall extend similar conditions of physical, intellectual, and social development to illegitimate children as for children born in wedlock.

82. Young persons shall be protected against exploitation and also against moral, intellectual, or bodily neglect. Provisions for reformatory education can be made only by law.

### II—Public Servants

90. All citizens of either sex shall be eligible for public appointments, in accordance with their qualifications and previous work. * * *

### IV—Education and Schools

102. Education shall be compulsory for all. It shall be afforded primarily by the primary school, at which eight years of attendance at least shall be required, and also by the continuation or technical schools for young persons of both sexes up to the end of their eighteenth year. The maintenance of the State schools is the affair of the State ; it may associate the municipalities in these duties.

Instruction and materials required for education in the primary and continuation schools shall be free of charge.

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## ESTONIA

*Constitution of 15 June 1920*

### II—Fundamental Rights of Estonian Citizens

6. All Esthonian citizens are equal in the eyes of law. There cannot be any public privileges or prejudices derived from birth, religion, sex, rank, or nationality. In Esthonia there are no legal class divisions or titles.

12. Science, art, and the teaching of the same are free in Esthonia. Education is compulsory for children arrived at the school age, and is gratuitous in elementary schools. The minority nationalities are guaranteed education in their mother tongue. Education is carried out under the control of Government.

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## FINLAND

*Constitution of Finland, 17 July 1919*

### Title VIII—Education

80. The principles of organisation of primary instruction and in respect to the obligations of the State and municipalities to support primary schools, as well as on the subject of compulsory education, shall be determined by law.

Instruction in the primary schools shall be free to all.

# GERMANY

*Constitution of the German Reich of 11 August 1919*

## Chapter II. Fundamental Rights and Duties of Germans.

### Section I—The Individual

109. All Germans are equal before the law.

Men and women have in principle the same civil rights and duties.

Privileges or discriminations in public law based upon birth or rank are abolished.....

### Section II—Community life

119. Marriage, as the foundation of family life and of the preservation and increase of the nation, stands under the special protection of the Constitution. It shall rest upon the equality of rights of both sexes.

It shall be the duty of the State (*Staat*) and of the municipalities to maintain the purity, health, and social welfare of the family. Families of many children shall have the right to compensatory public assistance.

Maternity shall have the right to the protection and public assistance of the State.

120. The education of their children for physical, intellectual, and social efficiency is the highest duty and natural right of parents, whose activities shall be supervised by the political community.

121. Illegitimate children shall be given by law the same opportunities for their physical, intellectual, and social development as legitimate children.

122. Youth shall be protected against exploitation as well as against moral, spiritual, or physical neglect. The State (*Staat*) and the municipalities shall make the necessary provisions.

Protective measures by way of compulsion may be instituted only by authority of law.

128. All citizens without discrimination shall be eligible for public office in accordance with the laws and their capacities and merits.

All exceptional provisions in respect to female officials shall be abolished.

The principles governing official relationships shall be regulated by national law.

### Section IV—Education and Schools

145. Compulsory education shall be universal. For this purpose the elementary school with at least eight school years, followed by the continuation school up to the completion of the eighteenth year, shall serve primarily. Instruction and school supplies shall be free in elementary and continuation schools.

## GREECE

### *Constitution of 1 (14) June 1911*

#### Concerning the Public Rights of the Greeks

16. Education, which is under the supreme supervision of the State, is conducted at the State expense.

Elementary education is obligatory for all, and is given free by the State.

Private persons and corporations are allowed to establish private schools conducted in accordance with the Constitution and the laws of the Realm.

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## IRELAND

### *Constitution, 1937*

#### The Family

41. (2) 1° In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2° The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

#### Education

42. (4) The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents especially in the matter of religious and moral formation.

#### Directive Principles of Social Policy

45. (2) The State shall, in particular, direct its policy towards securing

(*i*) That the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs ;

(4) 1° The State pledges itself to safeguard with especial care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged.

2° The State shall endeavour to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their sex, age or strength.

## LITHUANIA

*Constitution of 15 May 1928*

11. All Lithuanian citizens, men and women, are equal before the law. Special privileges may not be accorded to a citizen nor may his rights be reduced on account of his origin, religion or nationality.

### IX.—Public Education

82. Primary education is compulsory. The law indicates the time and procedure for the introduction of compulsory primary education.

Primary education in schools maintained by the State or by autonomous administrations is free.

### XIII.—Social Security

99. The foundation of family life is marriage. Equality of rights of both sexes lies at its base.

Family health and social welfare are protected and maintained by special laws.

Maternity is under the special protection of the State.

## POLAND

*Constitution of the republic of Poland, 17 March 1921*

### Section V—General Duties and Rights of Citizens

103. Children without sufficient parental care, neglected with respect to education, have the right to State care and aid within the limits to be determined by statute.

Parents may not be deprived of authority over their children except by judicial decision.

Special statutes determine the protection of motherhood.

Children under fifteen years of age may not be wage earners; neither may women be employed at night, or young labourers be employed in industries detrimental to their health.

Permanent employment of children and young people of school age for wage-earning purposes is forbidden.

118. Within the limits of the elementary school, instruction is compulsory for all citizens of the State. A statute will define the period, limits and manner of acquiring such education.

119. Teaching in State and self-government schools is gratuitous.

The State will ensure to pupils who are exceptionally able but not well-to-do, scholarships for their maintenance in secondary and academic schools.

*Constitution of the Republic of Poland, 23 April 1935*

7. (1) The rights of citizens to exercise an influence on public affairs shall be measured by the value of the efforts and merits of which they have given proof in the common interest.

(2) Origin, religion, sex and nationality shall not be reasons for the limitation of these rights.

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## PORTUGAL

*Political Constitution of the Portuguese Republic, 19 March 1933*

### Part I—Fundamental Guarantees

#### Section I—The Portuguese Nation

5. The Portuguese State is a unitary and corporative Republic founded on the equality of its citizens before the law, the free access of all classes to the benefits of civilisation, and the participation of all the structural elements of the nation in its administrative life and the enactment of its laws.

*Sole paragraph.*—Equality before the law includes the right of provision with public employment in conformity with capability or services rendered and does not admit any privilege of birth, titular or other nobility, sex or position, subject however, where women are concerned, to differences due to their nature and the welfare of the family and, in regard to the obligations and privileges of citizens to differences imposed by varying circumstances or natural conditions.

#### Section II—The Citizens

8. The following constitute the rights and individual guarantees of Portuguese citizens :

(5) Freedom of education.

#### Section IX—Education, Instruction and National culture

43. The State shall officially maintain primary, complementary, secondary and high schools, and institutions for advanced education.

1. Elementary, primary instruction is obligatory and may be given at home, or in private or State schools.

*National Labour Statute, 23 September 1933*

CHAPTER III—LABOUR

(*b*) *Employment of women and children.*

31. The employment of women and children outside their home shall be governed by special provisions in conformity with the requirements of morality, health, maternity, domestic life, education and social welfare.

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## RUMANIA

*Constitution, 20 February 1938*

CHAPTER II—RIGHTS OF RUMANIANS

21. The right to impart instruction is free, subject to the conditions laid down by the special laws, and in so far as the exercise of this right is not contrary to morals, public order or the interests of the State.

Primary education is compulsory. It shall be given free of charge in the State schools.

*Constitution, 29 March 1923*

6.....

The civil rights of women shall be established on the basis of complete equality of the sexes.

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## SPAIN

*Labour Charter, 9 March 1938*

CHAPTER II—REGULATION OF EMPLOYMENT

1. *Hours of work; prohibition of night work for women and children; homework; prohibition of employment of married women in workshops and factories.*—The State shall assume responsibility for constant and efficatious action for the protection of the worker, his life and his labour. It shall place suitable restrictions upon hours of work, in order that the working day shall not be excessive, and shall safeguard labour by affording it every possible guarantee of a protective and humanitarian character. In particular, it shall prohibit night work for women and children, regulate homework and set married women free from the ties of the workshop and factory.

CHAPTER X—SOCIAL WELFARE AND INSURANCE

2. *Social insurance.*—The various branches of social insurance, namely, insurance against old age, invalidity, maternity, industrial accidents, occupational diseases, tuberculosis and unemployment, shall be developed with a view to the organisation of a complete system of insurance. In the first place measures shall be taken to ensure the provision of adequate superannuation allowances for aged workers.

CHAPTER XII—PRIVATE PROPERTY

3. *The family heritage exempt from attachment.*—The State recognises the family as the natural nucleus and foundation of society and at the same time as a moral institution endowed with inalienable rights superior to any positive law. As a further guarantee of its maintenance and continuity the family heritage shall be exempt from attachment.

*Constitution of the Spanish Republic, 9 December 1931*

Part III

CHAPTER I—RIGHTS AND DUTIES OF SPANIARDS. INDIVIDUAL AND POLITICAL GUARANTEES

25. No juridical privilege may be based upon birth, relationship, sex, social class, wealth, political ideals or religious belief.

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40. All Spaniards, without distinction of sex, are admissible to public posts and offices according to their merit and capacity, except for such disabilities as the law may specify.

CHAPTER II—FAMILY, ECONOMIC CONDITIONS AND CULTURE

43. The family is under the special protection of the State. Matrimony is based on equality of rights for both sexes, and may be dissolved by mutual consent or upon the petition of either of the spouses, with allegation, in such case, of just cause.

Parents are obliged to support, assist, educate and instruct their children. The State shall supervise the performance of these duties and pledges itself to aid in their execution.

Parents have the same obligations towards children born out of wedlock as to those born in the married state. The civil laws shall regulate the investigation of paternity.

No declaration shall be entered in official records or in any register whatsoever as to the legitimacy or illegitimacy of births or the civil status of the parents.

The State shall aid the infirm and aged and give protection to maternity and infancy, adopting the "Declaration of Geneva" or the charter of the rights of children.[1]

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[1] The text of this Declaration prepared by the Save the Children International Union is as follows :—

1. The CHILD must be given the means needed for its normal development, both materially and spiritually.
2. The CHILD that is hungry must be fed ; the child that is sick must be nursed ; the child that is backward must be helped ; the erring child must be reclaimed ; and the orphan and the waif must be sheltered and succoured.
3. The CHILD must be first to receive relief in times of distress.
4. The CHILD must be put in a position to earn a livelihood, and must be protected against every form of exploitation.
5. The CHILD must be brought up in the consciousness that its talents are to be used in the service of its fellow men.

46. Work, in its various forms, is a social obligation and shall enjoy the protection of the laws.

The Republic shall assure to every worker the conditions necessary for a fitting existence. Its social legislation shall regulate : cases of insurance for illness, accident, unemployment, old age, invalidity and death ; the labour of women and young persons, and especially the protection of maternity ; the working day and the minimum and family salary rate ; annual holidays with pay ; conditions of Spanish workers abroad ; co-operative institutions ; the economic and legal relationship of factors entering into production ; the participation of workers in the direction, administration and benefits of enterprises ; and everything connected with the protection of workers.

48. * * * * *

Primary instruction shall be gratuitous and obligatory.

* * * *

## CATALONIA (PROVINCE OF SPAIN)

*Domestic Statute of the Generalitat, 26 May 1933*

### PART II.—SOCIAL PRINCIPLES

8. The family is under the guardianship of the *Generalitat.*

Matrimony is based on the equality of rights of the spouses.

The civil laws shall determine the rights and duties of children. They will also lay down rules for the investigation of paternity and the equality of children born in and out of wedlock.

11. Primary education will be obligatory, free and Catalan in language and spirit. * * * * *

14. Social assistance is a duty of the *Generalitat.* The *Generalitat* will provide for assistance in cases of maternity, infancy, old age, infirmity and invalidity in collaboration with the social insurance system, with the object of providing workers with means to meet the contingencies to which life is subject.

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## SWITZERLAND

*Constitution of the Swiss Confederation, 29 May 1874, as Modified up to June 1931*

### CHAPTER I.—GENERAL PROVISIONS

27.....The Cantons shall make provision for elementary education, which must be adequate, and be exclusively under the control of the civil authorities. It is compulsory and, in the public schools, free.

* * * * * *

The Confederation will take the necessary measures against Cantons which fail to fulfil these obligations.

27*a*. Subvention shall be granted to the Cantons to aid them in carrying out their obligations in respect of elementary education.

Effect will be given to this provision by legislation.

The organisation, direction and supervision of elementary schools remain within the competence of the Cantons, subject to the provisions of article 27 of the Federal Constitution.

34. The Confederation has the right to make uniform regulations concerning child labour in factories, the hours of work of adults therein, and the protection of workers in unhealthy and dangerous industries. * * *

54. The right to marry is placed under the protection of the Confederation.

No impediment to marriage may be based upon grounds of religious belief, the poverty of either party, their conduct or any other considerations whatever of a police nature.

* * * * * *

Children born before marriage are legitimised by the subsequent marriage of their parents.

## TURKEY

*Constitution of the Turkish Republic, 20 April 1924*

SECTION V.—PUBLIC LAW OF THE TURKS

87. Primary education is obligatory for all Turks and shall be gratuitous in the Government schools.

## UNION OF SOVIET SOCIALIST REPUBLICS

*Constitution (Fundamental Law) of the Union of Soviet Social Republics 5 December 1936*

CHAPTER X.—FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS

121. The Citizens of the U. S. S. R. have the right to education.

This right is ensured by universal, compulsory elementary education; by education, including higher education, being free of charge; * *

122. Women in the U. S. S. R. are accorded equal rights with men in all spheres of economic, State, cultural, social and political life.

The possibility of exercising these rights is ensured to women by granting them an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by State protection of the interests of mother and child, pre-maternity and maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens.

## YUGOSLAVIA

*Constitution of the Kingdom of Yugoslavia, 3 September 1931*

CHAPTER II.—ELEMENTARY RIGHTS AND DUTIES OF CITIZENS

16. In addition to State public schools, private schools may also be allowed within the limits of the law.

Elementary education is compulsory. In the State primary schools it is free.

All schools must impart a moral education and develop the civic conscience in the spirit of national unity and religious tolerance.

All educational institutions are placed under State control.

CHAPTER III.—SOCIAL AND ECONOMIC PROVISIONS

21. Marriage, the family and children are under the protection of the State.

## AMERICA

### UNITED STATES OF AMERICA

*Constitution of the United States, 1789*

Amendment XIX

*(Woman Suffrage)*

*Section* 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

*Section* 2. Congress shall have power to enforce this article by appropriate legislation.

CHILD LABOUR AMENDMENT*

*(Not in Force)*

*Section* 1. The Congress shall have power to limit, regulate, and prohibit the labour of persons under 18 years of age.

*Section* 2. The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.

It has not been found practicable to include in this pamphlet all the relevant provisions of the constitutions of the various States of the United States of America, particularly those on the subject of education. It should therefore, be borne in mind that in addition to the provisions reproduced in the pamphlet there may be other important provisions in at least some of the State constitutions bearing on the topics dealt with in the pamphlet.

ARIZONA

*Constitution of 1912*

XVIII. 2. No child under the age of fourteen years shall be employed in any gainful occupation at any time during the hours in which the public schools of the district in which the child resides are in session ; nor shall any child under sixteen years of age be employed underground in mines, or in any occupation injurious to health or morals or hazardous to life or limb, nor in any occupation at night, or for more than eight hours in any day.

CALIFORNIA

*Constitution of 1879*

XX. 17½. The Legislature may, by appropriate legislation, provide for the establishment of a minimum wage for women and minors and may provide for the comfort, health, safety and general welfare of any and all employees. No provision of this Constitution shall be construed as a limitation

*This proposed amendment has been ratified by 28 States. Ratification on behalf of three-fourths of the States is required for the coming into force of an amendment.

upon the authority of the Legislature to confer upon any commission now or hereafter created such power and authority as the Legislature may deem requisite to carry out the provisions of this section.

18. No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation, or profession.

IDAHO

*Constitution of 1890*

XIII. 4. The employment of children under the age of fourteen years in underground mines is prohibited.

LOUISIANA

*Constitution of 1921*

IV. 7. No law shall be passed fixing the price of manual labour, but the Legislature, through a commission or otherwise, may establish minimum wages for and regulate the hours and working conditions of women and girls, except those engaged in agricultural pursuits or domestic service.

XVIII. 5. A mother's pension shall be maintained in the State. Its provisions shall be determined by the Legislature.

7. (1) The Legislature may establish a system of economic security and social welfare, which may provide for the following:

(c) A system for the aid and welfare of mothers and children; which may provide:

1. Financial assistance to needy dependent children;
2. For promoting the health of mothers and children, including the care and treatment of crippled children and children who are suffering from conditions which lead to crippling;
3. For the protection and care of homeless, dependent and neglected children, and children in danger of becoming delinquent.

MONTANA

*Constitution of 1889*

XVIII. 3. It shall be unlawful to employ children under the age of sixteen years of age in underground mines.

NEBRASKA

*Constitution of 1875*

XV. 8. Laws may be enacted regulating the hours and conditions of employment of women and children, and securing to such employees a proper minimum wage.

NEW MEXICO

*Constitution of 1912*

XVII. 2. The Legislature shall enact laws requiring the proper ventilation of mines, the construction and maintenance of escapement shafts or slopes, and the adoption and use of appliances necessary to protect the health and secure the safety of employees therein. No children under the age of fourteen years shall be employed in mines.

XX. 10. The Legislature shall enact suitable laws for the regulation of the employment of children.

NORTH DAKOTA

*Constitution of 1889*

XVII. 209. The labour of children under twelve years of age, shall be prohibited in mines, factories and workshops in this State.

OKLAHOMA

*Constitution of 1907*

3. The employment of children, under the age of fifteen years, in any occupation injurious to health or morals or specially hazardous to life or limb, is hereby prohibited.

4. Boys under the age of sixteen years, and women and girls, shall not be employed, underground, in the operation of mines; and, except in cases of emergency, eight hours shall constitute a day's work underground in all mines of the State.

8. Any provision of a contract, express or implied, made by any person, by which any of the benefits of this Constitution, is sought to be waived, shall be null and void.

UTAH

*Constitution of 1895*

XVI. 3. The Legislature shall prohibit:

(1) The employment of women, or of children under the age of fourteen years, in underground mines.

8. The Legislature may, by appropriate legislation provide for the establishment of a minimum wage for women and minors and may provide for the comfort, safety and general welfare of any and all employees. No provision of this Constitution shall be construed as a limitation upon the authority of the Legislature to confer upon any commission now or hereafter created such power and authority as the Legislature may deem requisite to carry out the provisions of this section.

WYOMING

*Constitution of 1889*

IX. 3. No boy under the age of fourteen years and no woman or girl of any age shall be employed or permitted to be in or about any coal, iron or other dangerous mines for the purpose of employment therein; provided, however, this provision shall not affect the employment of a boy or female of suitable age in an office or in the performance of clerical work at such mine or colliery.

PUERTO RICO (TERRITORY OF U. S. A.)

*An Act to Provide a Civil Government for Puerto Rico and for Other Purposes, 2 March 1907*

§737. BILL OF RIGHTS AND RESTRICTIONS

The employment of children under the age of fourteen years in every occupation injurious to health or morals or hazardous to life or limb is hereby prohibited.

VIRGIN ISLANDS (TERRITORY OF U. S. A.)

*Organic Act of the Virgin Islands of the United States, 22 June 1936*

1406g. BILL OF RIGHTS AND RESTRICTIONS

The contracting of polygamous or plural marriages is prohibited.

The employment of children under the age of fourteen years in any occupation injurious to health or morals or hazardous to life or limb is hereby prohibited.

## ARGENTINA

SAN JUAN (PROVINCE OF ARGENTINA)

*Constitution of 10 February 1927*

31. The right to a minimum of economic security is recognised to the inhabitants of the Province. To this end the law shall establish: the duration of the working day fixed in relation to the requirements of health and the state of industrial development and of the development of agriculture and stock-raising; the minimum wage fixed in relation to the cost of living; a system of insurance against sickness, old age, invalidity, and protection for maternity, widowhood and destitute children, which may provide for compulsory contributions; * * * *

SANTIAGO DEL ESTERO (PROVINCE OF ARGENTINA)

*Constitution of 2 June 1939*

68. It is the duty of the Legislative Power:

(32) To legislate on the rights of the young to health and education.

## BOLIVIA

*Political Constitution of Bolivia, 30 October 1938*

SECTION XIV

*Social Order*

122. The law shall provide regulations for compulsory insurance to cover sickness, accidents, involuntary unemployment, disability, old age, maternity and death, discharge and re-imbursement of employees and workers, the work of women and minors, the maximum working day, the minimum salary, the weekly day of rest and holidays, annual vacations and maternity leave with pay, medical and hygienic attention and other social and protective benefits for workers.

SECTION XV

*The Family*

131. Marriage, the family, and maternity are under the protection of the law.

132. The law does not recognise inequalities among children; all have the same rights.

133. The laws shall provide for unattachable family estates.

134. The protection of the physical, mental and moral well-being of childhood is a primary duty of the State. The State shall defend the rights of children to a home, education, and sufficient assistance in the event they find themselves in a situation of abandonment, sickness, or misfortune. The State shall entrust the fulfilment of the provisions of this article to appropriate technical organisations.

SECTION XVIII

*Cultural System*

154. Education is the highest function of the State. Public instruction shall be organised under a single school system. The obligation of school attendance is general from seven to fourteen years. Primary and secondary instruction of the State is gratuitous.

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## BRAZIL

*Constitution of the United States of Brazil, 10 November 1937, as Amended to 12 October 1942 by Constitutional Laws 1—8*

The National Organisation

16. The Union shall have the sole jurisdiction to legislate on the following matters:

XXVII. The fundamental rules of defence and protection of public health and particularly of the health of children.

*The Family*

124. The family, constituted by indissoluble marriage, is under the special protection of the State. Large families will be granted compensation in proportion to their necessities.

125. The complete education of their offspring is the first duty and the natural right of parents. The State will not hold itself aloof to this duty, but will collaborate, either in a principal or secondary manner, in order to facilitate the execution or to meet the deficiencies and omissions of private education.

126. To natural children, in order to facilitate their recognition, the law will grant them equality with legitimate children, extending to the former the same rights and duties which the parents have to the latter.

127. Childhood and youth must be the object of special care and guarantee on the part of the State, which will take all measures to assure them physical and moral conditions of healthy life and the harmonious development of their faculties.

The moral, intellectual or physical abandonment of childhood and youth indicates a grave fault on the part of those who are responsible for the safeguard and education and imposes, on the State, the burden of providing the necessary comfort and care of their physical and moral preservation. Indigent parents have the right to invoke the aid and protection of the State for the maintenance and education of their offspring.

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EDUCATION AND CULTURE

129. To the childhood and youth who lack the necessary resources to obtain an education in private institutions, it is the duty of the Nation, the States and the municipalities, to assure them, by founding public educational institutions of all grades, the possibility of receiving an education adequate to their abilities, aptitudes and vocational tendencies.

* * * *

It is the duty of industrial and economic syndicates, to create, in its own particular sphere, apprentice schools for the children of their workmen or their associates. The law will regulate the fulfilment of this duty, the power which belongs to the States regarding such schools, as well as the assistance, facilities and subsidies which the public authorities will grant them.

130. Primary education is obligatory and free. Those better favoured are not thereby excluded from the duty of helping those less favoured; thus, on matriculation, each student will be asked to make a moderate monthly contribution for the school fund, unless he alleges, or it is evident, that he is unable to do so.

THE ECONOMIC ORDER

137. Labour legislation will observe, in addition, the following principles:

(*k*) Prohibition of work by children less than fourteen years of age; of night work by children under sixteen and, in industries detrimental to health, of children under eighteen and women;

(*l*) Medical and hygienic assistance to the worker and to the pregnant mother, assuring to the latter a period of rest before and after the confinement, without loss of salary;

AMAZONAS (STATE OF BRAZIL)

*Constitution of 2 June 1935*

In the sphere of its competence and in co-operation with the Union and the municipalities the State shall provide for the social order in accordance with the principles of justice and the necessities of collective life. With this end in view, it shall take special care:

(*b*) To assist the less favoured classes and help families whose sons shall be matriculated freely in the education and establishments of the State, books and school material being furnished freely to those who are recognised to be needy in accordance with conditions determined by law;

(*c*) To protect old age, maternity and infancy in appropriate establishments and protect the infirm irrespective of their station giving them refuge in a manner which utilises their services and aptitudes as far as possible.

* * * * *

(*f*) To control the sale of alcoholic liquors, establishing the necessary limitations in a form which protects persons of less than eighteen years against the vice of drunkenness;

## Rio Grande Do Sul (State of Brazil)

*Constitution of 29 June 1935*

110. Every industrial or agricultural undertaking outside a centre with a school and where there are among the workers and their children at least ten illiterate persons shall be required to give them primary instruction free; the State shall indicate the teacher and furnish the school material.

113. Within the competence ensured to the State by the Federal Constitution legislation shall promote:

* * *

(*d*) The regime of eight hours for manufacturing, commercial and mining work, its gradual reduction by means of increases in the efficiency of the productive processes; minimum wages; the restriction of night work; the limitation of the periods of work of expecting and nursing mothers with compulsory measures for the protection of their health; rest periods during working hours for minors between fourteen and eighteen years; the prohibition of work in manufacturing and mining for persons less than fourteen years of age;

(*f*) As a general rule, the installation of nurseries by industrial undertakings which have women in their service.

115. The State shall promote:

(*a*) The formation of an individual concern for health from the earliest ages, through primary and elementary instruction;

(*d*) Maternity and child welfare services which may be separate or attached to existing hospitals;

116. The State shall maintain compulsory school medical inspection in establishments for primary instruction.

## Sao Paulo (State of Brazil)

*Constitution of 9 July 1935*

79. The State and municipalities shall co-ordinate and ensure the social services, creating the necessary specialised departments, in order to:

(*c*) Protect maternity and infancy;

(*e*) Protect youth against all exploitation and against physical, moral and intellectual abandonment;

(*f*) Diminish infant mortality and morbidity;

80. The State and municipalities shall devote one per cent of their respective revenues to the protection of maternity and infancy.

84. The State shall organise its own system of education of all grades respecting the directions laid down by the Union.

Every industrial or agricultural undertaking outside a centre with schools which has fifty workers among whom and whose children there are not less than ten illiterates shall be required to give them primary instruction free.

## CHILE

*Constitution of the Republic of Chile, 18 September 1925*

CHAPTER III—CONSTITUTIONAL GUARANTEES

10. The Constitution guarantees to all inhabitants of the Republic;

(7) Freedom of education.

Public education is primarily the concern of the State.

Primary education is obligatory.

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## COLOMBIA

*Constitution of the Republic of Colombia, 5 August 1886*

TITLE III.—CIVIL RIGHTS AND SOCIAL GUARANTEES

35. The freedom of education is guaranteed. The State, however, shall have supreme control and power of inspection of the educational institutions, whether public or private, in order to ensure the fulfilment of the social purposes of education and the best intellectual, moral, and physical training of the students.

Primary instruction shall be free in the schools of the State and obligatory to the extent defined by law.

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## COSTA RICA

*Constitution of the Republic of Costa Rica, 7 December 1871, as Amended to 1942*

TITLE III

SECTION III.—SOCIAL GUARANTEES

51. The State of Costa Rica has a social function which consists in procuring for all the inhabitants of the country a minimum of well-being corresponding to political liberties which they enjoy; the State will accomplish this social function by the rationalisation of the production, distribution and consumption of wealth, by giving to the worker the special protection to which he has a right, by protecting mothers, children and the old who are unable to work and by adopting all measures calculated to ensure collective progress and tranquillity.

62. Equal pay, irrespective of sex, shall be due for equal work performed under identical conditions.

63. Social insurance is declared to be an absolute and inalienable right of all manual and intellectual workers; it shall be based on the system of compulsory contributions payable by the State, the employers and the workers themselves, for the purpose of protecting the wages or salaries of workers efficaciously against the social risks of sickness, invalidity, maternity, old age, death, involuntary unemployment and other risks specified by law. The cost of insurance against industrial accidents shall be defrayed exclusively by the employers.

The social insurance funds or reserves shall not be liable to transference and they shall not be utilised for purposes other than those for which they were constituted.

Social insurance shall be administered and directed by an autonomous institution entitled "The Costa Rican Social Insurance Fund".

TITLE V—EDUCATION

67. Primary education is compulsory, free and paid for by the Nation. It is under the direction of the Executive Power.

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## CUBA

*Constitution of the Republic of Cuba, 5 July 1940*

TITLE IV.—FUNDAMENTAL RIGHTS

SECTION I.—INDIVIDUAL RIGHTS

20. All Cubans are equal before the law. The Republic recognises neither personal exemption nor privileges.

All discrimination by reason of sex, race, colour, class, or any other that detracts from human dignity, is declared unlawful and punishable.

The sanctions incurred by those who violate this precept shall be established by law.

TITLE V.—THE FAMILY AND CULTURE

SECTION I.—THE FAMILY

43. The family, maternity and marriage have the protection of the Nation.

Marriage shall be valid only when performed by officers with legal capacity to do so. Judicial matrimony is gratis and shall be maintained by law.

Matrimony is the legal basis of the family and shall rest on an absolute equality of rights for both spouses; its economic regime shall be organised in accordance with this principle.

A married woman has full civil capacity and does not require permission or authorisation from her husband to control her property, freely engage in commerce or industry, or exercise any profession, trade or art, and to dispose of the proceeds of her labour.

Marriage can be dissolved by agreement of the spouses or on petition of either of the two for the reasons and in the manner established by law.

The courts shall determine those cases in which for reasons of equity, a union between persons with legal capacity to marry shall, because of its stability and exceptional nature, be given the same status as civil marriage.

Living allowances for the woman and the children shall enjoy preference over every other obligation, and against that preference no plea can be made of non-attachability of any property, salary, pension or economic income, regardless of its kind.

Unless the woman has proven means of subsistence or is declared guilty, an allowance shall be fixed for her in proportion to the financial position of the husband and also taking into account the needs of social life. This allowance shall be paid and guaranteed by the divorced husband and shall

continue until his ex-spouse again marries, without detriment to the allowance that will be fixed for each child, which must also be guaranteed.

Adequate penalties shall be imposed by law on those who, in case of divorce, of separation or for any other reason, seek to escape or elude that responsibility.

44. Parents are bound to support, aid, train and educate their children, and the latter to respect and aid their parents. The law shall see to the fulfilment of these duties, by adequate guarantees and sanctions.

Children born out of wedlock to a person who at the time of conception was competent to marry have the same rights and duties as specified in the preceding paragraph, except as to what the law prescribes with respect to inheritance. To this end, the same rights shall pertain to those born out of wedlock to a married person, when such person acknowledges them, or the relationship is declared by a court decision. Investigation of paternity shall be regulated by law.

All qualifications as to the nature of the relationship are abolished. No statement whatever shall be entered, differentiating births, nor as to the marital status of the parents, in the birth records, nor in any certification, record of christening or certificate referring to the relationship.

45. The fiscal regime, insurance and social aid shall be applied in accordance with the standards of protection for the family, established in this Constitution.

Childhood and youth are protected against exploitation and moral and material abandonment. The Nation, Provinces and municipalities shall organise adequate institutions for the purpose.

### Section II.—Culture

48. Primary instruction is obligatory for minors of school age, and it shall be furnished by the Nation, without prejudice to the co-operation entrusted to municipal initiative.

Both this instruction and pre-primary and vocational instruction shall be gratis when given by the Nation, Province or municipality. The necessary school supplies shall also be gratis.

Lower secondary instruction and all higher instruction furnished by the Nation or the municipalities shall be gratis, excluding specialised pre-university and university study.

* * * * * *

So far as possible, the Republic shall offer scholarships for the enjoyment of official instruction that is not gratis, to youths who, having shown outstanding vocation and aptitude, are prevented by insufficient resources from taking such studies for their own account.

52. Financial provision for all public instruction shall be made in the budgets of the Nation, the Province or the municipality, and it shall be under the technical and administrative direction of the Ministry of Education, except such teaching as by its special nature is dependent on other Ministries.

The budget of the Ministry of Education shall not be less than the ordinary budget of any other Ministry, except in case of an emergency declared by law.

The monthly salary of primary teachers must not in any case be less than one-millionth of the total budget of the Nation.

* * * All positions in the direction and supervision of official primary instruction shall be filled by technical graduates of the corresponding University course.

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TITLE VI.—LABOUR AND PROPERTY : SEC. I. LABOUR

66. A maximum day's work can not exceed eight hours. This maximum can be reduced to six hours daily for those over 14 and less than 18 years of age.

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Work and apprenticeship of minors of less than 14 years is prohibited.

68. No difference can be established between married and unmarried women with respect to their work.

Protection for maternity among the working class shall be regulated by law, which shall extend it to women employees.

A pregnant woman cannot be discharged from her work, nor shall she be required to effect, in the three months prior to childbirth, labour requiring considerable physical effort.

During the six weeks immediately preceding childbirth, and the six that follow it, she shall enjoy compulsory rest, with compensation equal to what she was paid for working, retaining her position and all the rights attached to it and covered by her labour contract. In the nursing period she shall be allowed two special rest periods a day, of one-half hour each, to nurse her child.

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## DOMINICAN REPUBLIC

*Constitution of the Dominican Republic, 10 January 1942*

TITLE II.—INDIVIDUAL RIGHTS

6. The following are declared to be a sacred part of the human personality :

(4) The freedom of instruction. Primary education shall be subject to the supervision of the State, and shall be compulsory for minors of school age, in the form established by law. In the official institutions, as well as in agricultural schools and schools of manual arts and domestic economy, such instruction shall be free.

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## ECUADOR

*Political Constitution of Ecuador, 23 December 1906*

TITLE V.—OF THE NATIONAL GUARANTEES

16. Education is free, with no restrictions other than those indicated in the respective laws ; the national and municipal educational codes shall, however, be lay and secular. Primary education and that of arts and crafts are gratuitous ; the former is, moreover, compulsory, but without prejudice to the right of parents to give their children such education as shall seem good to them.

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## GREENLAND

*Danish Law on the Administration of Greenland, 18 April 1925*

(*b*) ADMINISTRATIVE ORGANS IN GREENLAND.

IV. CHURCH AND SCHOOL ADMINISTRATION

*Primary Schools*

25. It is obligatory for every healthy child who has attained the age of 7 years, whether his parents are Danish or Greenlandic, to attend school unless the parents arrange for other adequate education, which must be subject to school inspection. Obligatory school attendance ceases when the child has attained its 14th year.

Further regulations for school attendance will be laid down by the Minister after discussion with the Provincial Councils.

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## GUATEMALA

*Constitution of the Republic of Guatemala, 11 December 1879 as Amended to 11 July 1935.*

TITLE II.—CONSTITUTIONAL GUARANTEES

18. Primary education is compulsory. Primary education supported by the Nation is free, and all education given by the State shall be secular.

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## HAITI

*Constitution of the Republic of Haiti, 8 August 1939*

TITLE II.—CIVIL RIGHTS

11. There is freedom of instruction. Such freedom is exercised under the control and supervision of the State in accordance with law.

Primary instruction, up to and including secondary instruction, is free, without prejudice to the conditions of admission established by law.

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## HONDURAS

*Constitution of the Republic of Honduras, 28 March 1936*

TITLE III.—CONSTITUTIONAL RIGHTS AND GUARANTEES

CHAPTER III—LIBERTY

60. The freedom of education is guranteed. Education supported by public funds shall be secular, and primary education shall also be gratuitous, compulsory, provided by the municipalities at their own expense and subsidised by the State.

TITLE XII.—EMPLOYMENT AND THE FAMILY

192. Young persons under the age of sixteen years and women shall not be employed on unhealthy or dangerous work or on night work in industry. They shall not be employed in commercial establishments after 6 P.M.

193. It shall not be lawful to conclude a contract of employment with young persons under the age of twelve years; young persons over the age of twelve years but under the age of sixteen years shall not be employed for more than six hours a day.

## MEXICO

*Constitution of the United States of Mexico, 31st Jan. 1917, as Amended to 5 Nov. 1942*

TITLE I : CHAPTER I.—INDIVIDUAL GUARANTEES

3. * * * * *

IV. * * * Primary education shall be compulsory and shall be given free of charge by the State.

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TITLE VI.—OF LABOUR AND SOCIAL WELFARE

123. The Congress of the Union shall enact laws on labour applicable to skilled and unskilled, workmen, employees, domestic help and artisans, and in general every labour contract; which shall be in conformity with the following principles:

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II. The maximum limit of night work shall be seven hours. Unhealthy and dangerous occupations are forbidden to all women and to children under sixteen years of age. Night work in factories is likewise forbidden to women and to children under sixteen years of age; nor shall they be employed in commercial establishments after ten o'clock at night.

III. The maximum limit of a day's work for children over twelve and under sixteen years of age shall be six hours. The work of children under twelve years of age shall not be made the subject of a contract.

V. Women shall not perform any physical work requiring considerable physical effort during the three months immediately preceding parturition; during the month following parturition they shall necessarily enjoy a period of rest and shall receive their salaries or wages in full and retain their employment and the rights they may have acquired under their contracts. During the period of lactation they shall enjoy two extraordinary periods of rest of one-half hour each, in order to nurse their children.

VII. The same remuneration shall be paid for the same work, without regard to sex or nationality.

## NICARAGUA

*Constitution of the Republic of Nicaragua, 22 March 1939*

CHAPTER II.—SOCIAL GUARANTEES

77. Marriage, the family, and maternity, are under the protection and defence of the State.

78. The State shall uphold the organisation of the family on the legal basis of marriage.

79. The State and the municipalities shall supervise the health and social betterment of the family.

80. Maternity has a right to the protection of the State.

81. The education of children is the primary duty and natural right of the parents, in order that they may obtain the greatest physical, intellectual, and social development.

Parents without economic resources are entitled to solicit the aid of the State for the education of their children.

82. The State shall endeavour to provide special assistance to large families.

83. The law shall give to illegitimate children the same consideration as to those who are legitimate for their physical, spiritual, and social development.

84. The civil laws shall regulate the investigation of paternity.

85. The law shall provide the organisation and regulation of the family estate, on the basis that it shall be inalienable, free from attachment, and exempt from all public burdens.

86. Public education shall be given preferential attention by the State.

87. The educational system is under the technical supervision of the State.

88. Primary education is compulsory, and where given at the expense of the State or public corporations it shall be gratuitous and secular.

100. The law shall recognise, with regard to those persons having some connection with work, whether as labourers or employees, the following:

(8) Regulation of the work of women and children;

(9) Medical and hygienic assistance to the workers and to pregnant women, assuring the latter, without loss of pay, a period of rest before and after childbirth.

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## PANAMA

*Constitution of the Republic of Panama, 2 January 1941*

### TITLE III.—INDIVIDUAL AND SOCIAL RIGHTS AND DUTIES

52. The law shall determine all matters concerning the civil status of persons, and their rights and duties, subject to the following rules:

(1) The family shall be under the special protection of the State;

(2) Marriage is based on the equality of rights for both spouses and may be dissolved by divorce in accordance with the provisions of law;

(3) The paternal power is the aggregate of rights and duties which parents have with relation to their children. Such power shall be defined by the law, and its exercise shall be regulated on the basis of social interest and for the benefit of the children;

(4) Parents have the same duties towards children born out of wedlock as they have towards those born in wedlock;

(5) The law shall regulate the investigation of paternity;

(6) The law shall provide whatever measures are necessary and appropriate for the due protection of maternity and infancy, and for the moral, intellectual, and physical development of childhood and youth;

(7) The State shall supervise the social and economic development of the family, and may establish the family estate for poor working and rural classes, the property of which it shall be composed to be determined on the basis that it shall be inalienable and free from judicial attachment.

56. * * * Primary education is compulsory; and public primary, normal, vocational, and secondary education shall be gratuitous.

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## PARAGUAY

*Constitution of the Republic of Paraguay, 10 July 1940*

GENERAL DECLARATION

10. Primary education is compulsory and gratuitous. The Government shall promote secondary, professional, and university education.

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RIGHTS, DUTIES AND GUARANTEES

23. The civil rights of women shall be regulated by law, with due consideration for the unity of the family, the equality of man and woman and the differences in their respective functions in society.

## PERU

*Constitution of the Republic of Peru, 29 March 1933, as Amended in 1936 and 1939*

TITLE II.—CONSTITUTIONAL GUARANTEES

CHAPTER I.—NATIONAL AND SOCIAL GUARANTEES

51. Marriage, the family, and maternity are under the protection of the law.

52. It is a primary duty of the State to protect the physical, mental, and moral health of childhood. The State shall protect the right of the child to home life, education, vocational training, and sufficient care when he finds himself abandoned, ill, or in misfortune. The State shall entrust the fulfilment of the provisions of this article to adequate technical organisations.

TITLE III.—EDUCATION

72. Primary instruction is obligatory and free.

73. There shall be at least one school in every place where the population of school age amounts to 30 pupils.

Complete primary instruction shall be given in every provincial and district capital.

74. Schools functioning in industrial, agricultural or mining centres shall be maintained by the respective proprietors or undertakings.

## EL SALVADOR

*Constitution of the Republic of El Salvador, 20 January 1939*

TITLE IV.—CHAPTER I. RIGHTS AND GUARANTEES

54. Education is free; primary instruction, is, in addition, compulsory.***

The State and the municipalities are bound in a special manner to increase primary education, by providing the necessary schools for this purpose, in which such education shall be gratuitous.

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CHAPTER II.—THE FAMILY AND LABOUR

60. The family, as the fundamental basis of the Nation, must be specially protected by the State, which shall provide the necessary laws and regulations for its welfare, to promote marriage, and to protect maternity and childhood.

61. The family estate, for the benefit of Salvadoreans, is hereby established. A special law shall regulate it.

105. The following are duties of the Executive Power.

(10) To protect maternity and infancy, organising the necessary institutions for this purpose.

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## URUGUAY

*Constitution of the Oriental Republic of Uruguay, 18 May 1934, as Modified on 11 January 1937 and 29 November 1942*

SECTION II.—RIGHTS, DUTIES AND GUARANTEES

CHAPTER I

39. The State shall protect the social development of the family.

40. The care and education of their children, in order that they may attain their full physical, intellectual and social capacity, is a duty and a right of parents.

Persons who have numerous offspring to bring up have a right to compensatory help, should they need it.

Requisite measures to ensure the protection of infants and adolescents against corporal, intellectual or moral abandonment by their parents or guardians, and also against exploitation and abuse, shall be laid down by law.

41. Parents have the same duties towards children born out of wedlock as towards those born in wedlock.

Maternity, whatever may be the condition or status of the woman, has a right to the protection of society, and to its assistance in case of need.

42. The law shall arrange that child delinquents shall be subjected to a special regime, in which women shall participate.

53. The law shall recognise as appertaining to anyone who stands in a relationship of work or service as a worker or employee, the right to moral and civic independence of conscience; a just remuneration; the limitation of working hours; weekly rest; and physical and moral hygiene.

The work of women, and of young persons under 18 years of age shall be specially regulated and limited.

61. Elementary education is obligatory. The State shall take the necessary steps to this end.

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## VENEZUELA

*Constitution of the United States of Venezuela, 20 July 1936*

TITLE I.—THE VENEZUELAN NATION AND ITS ORGANISATION

SECTION II.—BASIS OF THE UNION

15. The States agree to reserve to the competence of the Federal Power:

(9) Legislation regarding public instruction.

Primary elementary instruction is compulsory and that which is given in official institutions shall be free;

TITLE II.—VENEZUELANS AND THEIR RIGHTS AND DUTIES

32. The Nation guarantees to Venezuelans:

(15) The freedom of education.

The moral and civic education of the child is obligatory, and shall be guided of necessity by the national interest and human solidarity. There shall be at least one school in each locality whose student population is not less than thirty pupils.

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# ASIA

## AFGHANISTAN

*Fundamental Principles of the Government of Afghanistan, 23 October 1931 (with Addendum of 22 February 1933)*

20. Primary education for the children of Afghan subjects is compulsory.

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## CHINA

*Provisional Constitution Adopted at the Fourth General Session of the National People's Convention, 12 May 1931*

CHAPTER II.—RIGHTS AND DUTIES OF THE PEOPLE

6. All citizens (Kuo-Min) of the Republic of China shall be equal before the law, irrespective of sex, race, religion or caste.

CHAPTER IV.—PEOPLE'S LIVELIHOOD

41. In order to improve the living conditions of labour, the State shall put into effect various laws for the protection of labour and shall afford special protection to child and woman workers in respect to their age and health.

CHAPTER V.—EDUCATION OF THE CITIZENS

48. Both sexes shall have equal opportunity for education.

50. All children of school age shall receive free education. Details shall be separately provided by law.

51. Those who have not had free education (in their youth) shall receive special adult education. Details shall be separately provided by law

*The Government Draft of the Proposed Constitution, Released 30 April 1937*

CHAPTER VI.—NATIONAL ECONOMIC LIFE

124. In order to improve the workers' living conditions, increase their productive ability and relieve unemployment, the State shall enforce labour protective policies.

CHAPTER VII.—EDUCATION

132. Every citizen of the Republic of China shall have an equal opportunity to receive education.

134. Children between six and twelve years of age are of school age and shall receive elementary education free of tuition. Detailed provisions shall be provided by law.

135. All persons over school age who have not received an elementary education shall receive supplementary education free of tuition. Detailed provisions shall be provided by law.

137. Educational appropriations shall constitute no less than fifteen per cent. of the total amount of the budget of the Central Government and no less than thirty per cent. of the total amount of the Provincial, district and municipal budgets respectively. Educational endowment funds independently set aside in accordance with law shall be safeguarded.

Educational expenditures in needy Provinces shall be subsidised by the Central Treasury.

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## COMMONWEALTH OF THE PHILIPPINES

CONSTITUTION OF THE PHILIPPINES

*Adopted by the Constitutional Convention of 8 February 1935 and Ratified by the Philippine Electorate on 14 May 1935*

XIII.—GENERAL PROVISIONS

5. All educational institutions shall be under the supervision of and subject to regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens. * * *

6. The State shall afford protection to labour, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labour and capital in industry and in agriculture. The State may provide for compulsory arbitration.

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## SYRIA

*Constitution of the State of Syria, 14 May 1930*

PART I.—FUNDAMENTAL PROVISIONS

CHAPTER II.—RIGHTS OF INDIVIDUALS.

21. Primary education shall be compulsory for all Syrians of both sexes, and shall be given free of charge in the public schools.

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## AUSTRALIA

*Commonwealth of Australia Constitution Act. Proposed Amendment to the Constitution, 1 October 1942*

60a. (2) Without limiting the generality of the foregoing sub-section, it is hereby declared that the power of the Parliament shall extend to all measures which in the declared opinion of the Parliament will tend to achieve economic security and social justice, including security of employment and the provision of useful occupation for all the people, and shall include power to make laws with respect to :

(*n*) Child welfare.

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## AFRICA

### EGYPT

*Constitutions of 19 April 1923 and 22 October 1930*

PART II.—RIGHTS AND DUTIES OF EGYPTIANS

19. Elementary education is compulsory for young Egyptians of both sexes. It is given free of charge in the public maktabs.

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## EXTRACT FROM DRAFT FRENCH CONSTITUTION, JUNE, 1946

### SECTION I

*The Freedoms*

*Article I.*—All men are born and remain free and equal before law.

The law guarantees to women, in all domains, rights equal to those of men.

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### SECTION II

*Social and Economic Rights*

*Article XXIC.*—The nation guarantees to the family conditions necessary for its free development. It equally protects all mothers, all children by legislation and appropriate social institutions. It guarantees to women the exercise of her functions as a citizen and a worker in conditions that permit her to fulfil her role of mother and her social mission.

*Article XXV.*—The widest possible culture must be offered to all without other limitation than aptitudes of each one. Every child has the right to instruction and education in the respect of liberty. Organisation of public education at every stage is the duty of the State. This education must be free and made accessible to all by material aid to those who without it would not be able to pursue their studies.

*Article XXVII.*—The duration and conditions of work must in no way affect health, dignity or the family life of the worker. Adolescents must not be constrained to work that hampers their physical, intellectual or moral development. They have the right to organize professionally.

*Article XXVIII.*—Men and women have the right to just remuneration according to the quality and quantity of their work, in any case, to resources necessary for living worthily, both they and their families.

*Article XXXVIII.*—No one must be placed in a position of economic, social or political inferiority contrary to his dignity or be allowed to be exploited by reason of sex, age. colour, nationality, religion, opinions or racial or other origins.

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## NEHRU REPORT (ALL PARTIES CONFERENCE, 1928)

*Fundamental Rights*

(v) All citizens in the Commonwealth of India have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the State, and such right shall be enforceable as soon as due arragements shall have been made by the competent authority.

Provided that adequate provision shall be made by the State for imparting public instruction in primary schools to the children of members of minorities of considerable strength in the population through the medium of their own language and in such script as is in vogue among them.

*Explanation*—This provision will not prevent the State from making the teaching of the language of the Commonwealth obligatory in the said schools.

(xvii) Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing of a living wage for every worker, the protection of motherhood, welfare of children, and the economic consequences of old age, infirmity and unemployment and Parliament shall also make laws to ensure fair rent and fixity and permanence of tenure to agricultural tenants.

(xix) Men and women shall have equal rights as citizens.

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## DECLARATION OF FUNDAMENTAL RIGHTS ADOPTED BY THE INDIAN NATIONAL CONGRESS, 1933

*Fundamental Rights and Duties*

(1) (iv) All citizens are equal before the law irrespective of religion, caste, creed or sex.

(v) No disability attaches to any citizen, by reason of his or her religion, caste, creed, or sex, in regard to public employment, office of power or honour, and in the exercise of any trade or calling.

(xi) The State shall provide for free and compulsory primary education.

*Labour*

(4) Protection of women workers, and especially, adequate provision for leave during maternity period.

(5) Children of school-going age shall not be employed in mines and factories.

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## CONSTITUTIONAL PROPOSALS OF THE SAPRU COMMITEE, 1945

Para. 204. ** In the case of women, we are anxious that, while they may be at liberty to contest with men in general electorates, a minimum of representation should be guaranteed to them. In matters of social and moral development particularly with reference to public health, education, child welfare, and the welfare of their sex, educated women in India can play a great part and the presence of their representatives in the legislature is, in our opinion, absolutely essential.

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